

1596
R E A D I N G S

U P O N T H E

Statute Law,

ALPHABETICALLY DIGESTED.

Wherein the

Most Obscure and Difficult Points

Are Clear'd up and Illustrated by

Resolutions and adjudg'd Cases,

Taken from the

Best AUTHORITIES Extant.

V O L. II.

By a GENTLEMAN of the *Middle-Temple.*

L O N D O N:

Printed for the Author, and are to be sold by
D. BROWN, T. OSBORN, W. MEARS, and F. CLAY.
MDCCXIII.





READINGS

UPON THE

Statute LAW.

VOL. II.

Churches.



AFTER the 29th of September 1687. 1 Jac. 2. cap. and before the 29th of September 1700. there shall be paid for all Coals and Culm brought into the Port of London, or the River Thames, within the Liberty of the said City, over and above all other Impositions, the Duties following; viz. for all such Coals as are sold by the Chaldron, for every Chaldron containing 36 Bushels Winchester Measure, eighteen pence, and for such Coals as are sold by the Tun, for every Tun containing 2000 Weight, eighteen pence; which Duty, shall be paid to the Archbishop of Canterbury, Bishop of London, and the Lord Mayor or for the time being, or any two of them, or to their Deputies or Assigns, by every Master or Owner of the Vessel whereupon such Coals are laden, before they shall break, bulk, or have a Meeter assign'd for the measuring

Duty of 18 d.
per Chaldron
laid on all
Coals brought
to London.

or weighing such Coals; and the Party appointed to receive the said Duty, shall give a Receipt *Gratis* to the Party paying the same. *Stat. 1 Jac. 2. cap.*

Forfeiture of
5 s. for every
Chaldron
conceal'd.

And the Coal Meeters appointed to measure or weigh such Coals so soon as any Vessel shall be unladen, shall forthwith deliver a Certificate to the Officers of the said Archbishop, &c. appointed to receive the said Duty, of the Sorts, Quantities, or Number of Chaldrons or Tuns of Coals which shall be delivered from on board such Vessel, on pain of being suspended from their Employments for a Year: And in case it shall appear that there was on board a greater Number of Chaldrons or Tuns of Coals than the Duty has been paid for, then there shall be paid to the said Archbishop, &c. for every Chaldron or Tun conceal'd five Shillings more; for all which Impositions, such Vessel, or the Tackle or Furniture thereof may be attach'd and detain'd by Warrant from the said Archbishop, &c. until payment thereof. *Ibid.*

Provided that if the Importer shall within 24 Hours pay the whole Duty for such Surplusage of Coals, the penalty aforesaid shall be discharged; and it shall be lawful for the said Archbishop, &c. to appoint Officers to go on board all Vessels laden with Coals and to inspect the Coal Meeters in their Work, and to certify as directed by their Warrant. *Ibid.*

Duties applied
to the rebuilding
St. Paul's.
Books of Receipts and Payments to be kept.

And all the Duties arising by this Act, shall in the first place be applied and disposed to the rebuilding, finishing and adorning, the Cathedral of St. Paul's. *Ibid.*

And there shall be provided by the said Archbishop, &c. Books of Vellum or Parchment, in which all Monies received shall be enter'd, and also other like Books, wherein the Accounts of all Payments and Disbursements shall be likewise enter'd, to be inspected by all Persons concerned *Gratis*; an Abstract of which Books shall yearly before the end of Michaelmas Term, be transmitted into the Exchequer, containing the Receipts and Disbursements in the Year, proceeding and ending upon the 24th of June next before, where any person concerned may have Access to the said Accounts *Gratis*, and the Money hereby arising, shall be employed in the finishing and adorning the said Cathedral, and be issued and paid as the said Archbishop, &c. by their Warrants shall direct; And it shall be lawful for the said Archbishop, &c. to dispose of any part of the said Monies, not exceeding fourteen pence in the pound, to the Treasurers and other Officers for their trouble. *Ibid.*

And

CHURCHES.

3

And they are impowered by Indenture under their Borrowing Hands and Seals, to engage the Profits arising by this Act, Clause, for the Security of any Sums of Money, to be borrowed for the Purposes aforesaid. *Ibid.*

Provided that if any person shall be prosecuted for Costs, what he shall do in pursuance of this Act, he may plead the general Issue, and give this Act, &c. in evidence; and if the Plaintiff discontinue, &c. the Defendant shall have double Costs. *Ibid.*

And all the Monies by this Act to be received, shall be Receiver General paid to such Persons as the said Archbishop, &c. shall appoint point under their Hands and Seals to be Receivers general, so as they first give Security to the Dean and Chapter of St. Paul's for the due Repayment thereof, the said Security to be approved by the Lord Chancellor, Chief Justices, and Chief Baron, or any two of them. *Ibid.*

And it shall be lawful, for the said Archbishop, &c. to Fifth part appropriate such part of the Duties granted by this Act ply'd to build, as shall in their Discretion seem sufficient for the com other Churches pleating any of the Parochial Churches in London that re-es in London, main unfinish'd, which were enacted to be rebuilt by the 22 Car. 2. cap. 11. after the Fire, so as the same doth not exceed one fifth part in any one Year. *Ibid.*

Provided that one Hundred Chaldron of Coals for Coals for Chel- the use of Chelsea College, be exempted from the said Du- sea College ties. *Ibid.* exempted.

After the 29th of September 1700. and before the 29th 8 & 9 W. 3. of September 1716. there shall be paid for all Coals brought c. 14. into the Port of London, over and besides all other Impositions, for the finishing the Cathedral Church of St. Paul's, Coals 1 s. per the Duties following; viz. twelve pence for every Chal-Chaldron, and dron, and twelve pence for every Tun; and the Archbi- 1 s. per Tun shop, Bishop of London, and Lord Mayor, or any two of for finishing them, shall have like powers for the disposing of the Mo- St. Paul's: nies arising by this Act, unless any otherwise directed as they had by the said former Act of the 1 Jac. 2. Stat. 8 & 9 W. 3. c. 14.

One full sixth part of all Monies arising by this Act, One sixth for shall be dispos'd towards the Repair of the Collegiate the Repair of Church of St. Peter in Westminster, which said sixth part, Westminster Ab- shall be paid to the Chancellor of the Exchequer, the bey. Lord Chief Justice of the King's Bench, and the Dean of Westminster, who are hereby appointed Commissioners for repairing the said Collegiate Church by equal quarterly Payments, the first payment to be made on the 30th of December 1700. *Ibid.*

After the 15th of May 1708. there shall be paid for all 1 A. c. 12: Coals and Culm brought into the Port of London, over and

2 s. per Chal-
dron laid for
finishing
St. Paul's.

and above all other Impositions, the Duties following; viz. two Shillings for every Chaldron, and two Shillings for every Tun of such Coals as are sold by Weight, and the Powers, Rules, and Clauses, in the 1 Jac. 2. shall be of such Force for levying, collecting, and disposing of the Duties hereby granted, as if the same were particularly recited in this Act: And all Sums arising by this Act, shall be appropriated to the compleating, adorning, and preserving, the said Cathedral Church of St. Paul. Stat. 1 Anne, c. 12.

Houses on the
North to be
demolished.

Part of the said Monies shall be appropriated for purchasing and demolishing the Houses and Buildings on the North Side of the said Church, for the Security thereof. *Ibid.*

And no others
to be erected
in the Church
Yard.

And for making the Church Yard more regular, Commissioners are impowered to treat with the Parishioners of St. Gregory and St. Faith, for exchanging their places of Burial in the Church Yard and Vaults in St. Paul's for other equivalent Ground: And no House or Building whatsoever, shall hereafter be erected in any part of the said Church Yard, except the place for meeting of the Chapter, or for the keeping of the Stores for necessary Repairs, which may be built with part of the Money raised by this Act. *Ibid.*

Borrowing
Clause.

And the said Commissioners are impowered to borrow Money on the Duties arising by this Act, for the more speedy rebuilding the said Cathedral Church. *Ibid.*

9 A. c. 22.

After the 14th of May 1716. and before the 29th of September 1724. there shall be paid for all Coals and Culm brought into the Port of London, over and besides all other Impositions, the Duties following; viz. from the 14th of May 1716. to the 29th of September 1716. two Shillings for every Chaldron, and two Shillings for every Tun of such Coals as are sold by Weight. And after the 28th of September 1716. to the 28th of September 1724. there shall be paid for every such Chaldron and Tun of Coals, three Shillings, which Duties shall be paid to her Majesty, in the same manner, and under such Pains and Forfeitures, as are express'd or refer'd unto in any Act now in force for levying any other Duties now payable to her Majesty, for any Coals imported into London.

3 s. per Chal-
dron on Coals
from 1716 to
1724.

For building
50 new Chur-
ches in London.

And all Sums arising by this Act, shall be paid into the Receipt of the Exchequer, and appropriated for the building of fifty New Churches with Towers or Steeples to each of them, and for purchasing of Sites of Churches and Church Yards and burying Places, in or near the Cities of London and Westminster, or the Suburbs thereof; and for making such Chappels as are already built, Parish Churches,

Churches, and for purchasing Houses for the Ministers of And repairing the said Churches; and for the applying 4000*l.* per Ann. *Westm. Abbey*, towards the repairing the Collegiate Church of *St. Peter* and finishing *Westminster*, and 6000*l.* per Ann. towards the finishing *Greenwich Hospital*, and the Chappel there.

And the Parish Church of *East Greenwich* is declar'd to *Greenwich* be one of the said fifty New Churches; and that such Church to be Chappels as are fit for the purpose, may be made Parish one of the new ones.

And it shall be lawful for her Majesty to appoint Com-Commission-
missioners for the Purposes aforesaid, who shall within ers to be ap-
twenty Days after they are so constituted, meet and in- pointed to en-
form themselves in what Parishes the said New Churches quire out pro-
(except that for *Greenwich*) are most necessary and of pro- per places, &c.
per Places for the Sites of such New Churches, with Ce-
metaries for each of them, and which of the said Chap-
pels are fit to be made Parish Churches: And the said
Commissioners shall before the 24th of *December 1711.*
certify to her Majesty, such Matters as shall appear to
them upon their said Enquiries, with their Opinions there-
upon. and present a Duplicate thereof to each House of
Parliament.

Provided it shall be lawful to borrow any Sum of Mo- Borrowing
ney upon the Credit of this Act, at 6 per Cent. for the Clause.
beginning or carrying on the said Service.

Provided that this Act shall not extend to charge such Coals for *Chel-*
Coals not exceeding an Hundred Chaldron, as shall be *sea College*
for the only Use and Service of the Hospital at *Chelfea*. Duty free.

The Commissioners appointed by her Majesty for the 10 *A. c. 11.*
building of fifty New Churches, are authoriz'd and re- Commission-
quired to continue to inform themselves as to all Matters ers to conti-
refer'd to them by 9 *Anne, c. 22.* till they shall have com- nue the En-
pleted and finished the same. *Stat. 10 Anne, c. 11.* quiries.

And they are also authoriz'd and impowered, to con- And to pur-
tract for and purchase all such Messuages, Lands, Rights, chase Sites for
and Interest, as they shall think proper for the said New Churches, &c.
Churches, Church Yards, or Cemeteries, and Houses of
Habitation for the respective Ministers of the said Chur-
ches. *Ibid.*

And such Lands, &c. so to be purchas'd, shall be con- Build Chur-
vey'd to the said Commissioners, or any five, or more of ches on them.
them, and their Heirs, for the Purposes aforesaid: And Turn Chap-
they are also impowered, to build Churches upon the pels into
Scites so purchas'd by them, and to cause such Chappels Churches.
already built, as they shall think proper, to be made con- Build Houses
venient for Parish Churches, and to provide such Houses for the Mini-
for the Ministers, and to cause such Church Yards to be sters, and lay
enclos'd, out Church
Yards.

enclos'd, as by the said former or this present Act are intended *Ibid.*

Such Church
Yards to be
part of the
Parish.

And the said Commissioners shall provide more Church Yards than one for a Church, where they shall see Occasion, and the Ground purchased for that Use, shall after the purchasing and consecrating thereof be deem'd part of the Parish for which it shall be purchas'd, and be discharg'd of all Taxes to the other Parish out of which it shall be taken. *Ibid.*

Borrowing
Clause.

The Treasury is impower'd to borrow Money at 8 per Cent. for the carrying on and effecting the said Work. *Ib.*

Treasury to
issue the Mo-
nies hereby
arising, as the
Commission-
ers direct.

And the Treasury is authorized to issue and pay the Monies arising by way of Loan, or otherwise, by Vertue of this or the said former Act, as shall be thought necessary by the said Commissioners for purchasing such Lands, &c. for the purposes aforesaid; and for building such New Churches, and converting Chappels into Churches, and providing Houses for the Ministers, or any other Purposes, by this or the said former Act prescribed, in such manner and proportion as the said Commissioners shall think fit. *Ibid.*

Commission-
ers to divide
and ascertain
the Bounds of
Parishes, &c.

And it shall be lawful for the said Commissioners, or any five or more of them, by Deed enrolled in the Court of Chancery, to describe and ascertain the limits and bounds of the scite of each New Church, and of the Minister's House, and of the Church Yards for each Parish; and also the district and division of each Parish, appointed for every Church; and every such district or division, shall after the Enrollment of such Deed and Consecration of such New Church, be deemed a distinct Parish to all intents and purposes whatsoever, and shall within one Month after the Consecration of such New Church, be divided and exempt from the Parishes from which the same shall be so taken, and the Inhabitants shall be exempted from bearing any Offices or Charges in respect thereof, except as is hereby otherwise provided. *Ib.*

10 A. c. 11.
Part of large
Parishes to be
annexed to
small.

And it shall be lawful for the said Commissioners, by Deed enrolled as aforesaid, to separate, divide, and take a particular part out of any of the large Parishes of London and Westminster, or the Suburbs thereof, where any New Church shall be erected, and annex and unite the same to any other lesser Parish adjoining, wherein a Church is already erected, and the same shall be deemed as part of the Parish to which it shall be so annexed, and the Inhabitants shall after Tuesday in Easter Week, next after such Deed enrolled, be discharged and exempted from all Offices and Taxes in the former Parish. *Ibid.*

CHURCHES.

7

And there shall be a Rector of every New Church, and Preacher of a perpetual succession of Rectors there; and where there Chappel turned into a certain Morning Preacher in any Chappel which shall be made a Parish Church, who shall have officiated there one Month before the Consecration thereof, he shall be the first Rector of such New Church and Parish, without any Admission, Institution or Induction; and in every other New Church, the first Rector shall be appointed by her Majesty, and the Freehold and Inheritance of the Lands and Hereditaments to be purchased for such New Church, shall be vested in such Rector and his Successors who are hereby enabled to purchase any other Lands, not exceeding together Two hundred Pounds *per ann.* for each Church. *Ibid.* Lands not exceeding 200 l.

And the said Commissioners are impowered to inform themselves of the Right of Advowson, Patronage, and Nomination of such Church in every Parish from which any part or district shall be taken, and to treat and agree with such Persons as have any Right or Interest in the same for the more effectual dividing such Parish, and the Tythes and Revenues belonging to the present Church, and apportioning the same to take place at the first avoidance of such Church, and for ascertaining the Right of Patronage of every New Church, to which such part so divided shall be annexed, and such Settlements as shall be made for such Division, with the assent of the Ordinary or for settling such Right of Patronage, by any Ordinance under the Hands and Seals of such Commissioners, binding, and the Patrons, or of any Person by such Parties authorized, shall be binding as well to her Majesty as all other Persons for ever. *Ibid.*

And all Bodies Politick and Corporate, Guardians, Compotees of Lunatics, and Ideots, Executors, Administrators and Trustees, are impowered to contract with the said Commissioners, and convey Lands to them for the Purposes aforesaid; and to agree with them for the limiting and settling the Right of Patronage of succeeding Rectors as aforesaid. *Ibid.*

Provided that the Court of Chancery shall direct how the Monies arising by such Sale shall be applied. *Ibid.*

Provided that her Majesty, until such Agreement can be made concerning the Patronage, shall name from time to time the Rectors of such new Churches. *Ibid.*

* And the first and succeeding Rectors of such New Churches, except the present Ministers of such Chappels as aforesaid, shall be presented, instituted, and inducted, as other Rectors are, and shall be subject in like manner to the Ordinary of the Diocese. *Ibid.*

B 4

Provided ment made.

* Ministers to be instituted and inducted as usual.

- Successors to** Provided that the Successors of the present Incumbents, enjoy the till such Agreements and Settlements be made, shall enjoy the said respective Rectories, Vicarages, and Curacies, Rectories till joy the said respective Rectories, Vicarages, and Curacies, Agreements and the Tythes Dues and Profits thereof, in as ample made. manner as if this Act had not been made. *Ibid.*
- Proprietors** Provided also that this Act shall not prejudice, or alter the Property of any Proprietor of a Chappel which Rights to shall be made a Parish Church, without the Consent of Chappels saved. such Proprietor obtain'd in Writing under his Hand and Seal. *Ibid.*
- But to sell the** Provided that such Proprietors shall not sell their Properties to none the Properties of the said Chappels, but to the Inhabitants of the respective Parishes, for which such Chappels shall be appointed Parish Churches. *Ibid.*
- First Church-** And the first Churchwardens and other Parish Officers wardens appointed by the Commissioners within one Month after the Consecration of such Church, and all succeeding Churchwardens and Commissioners, Parish Officers shall be constituted annually, according to the Laws now in force. *Ibid.*
- Commissioners to appoint Vestrymen.** And the said Commissioners with the consent of the Ordinary, by Deed inrolled in Chancery, shall name a sufficient number of Inhabitants in each new Parish to be Vestry-men thereof, who shall have the like Powers as the Vestry-men of the Parish, out of which such new Parish, or the greater part thereof shall be taken; and if there be no select Vestry, then as the Vestrymen of the Parish of St. Martin's in the Fields do exercise. *Ibid.*
- Ecclesiastical Jurisdiction saved.** Provided that this Act shall not invalidate any Ecclesiastical Law, or destroy the Rights or Powers of the Bishop of London, or other ordinary Archdeacon, Chancellor or Official, but they may exercise Ecclesiastical Jurisdiction in all such new Parishes as heretofore the Admission or Institution of such present Ministers in such Chappels as shall be converted into Parish Churches excepted.
- Greenwich Church to be one.** Provided, That one of the said fifty New Churches shall be erected in East Greenwich in the County of Kent, *Ibid.*
- New Commissioners may be appointed.** Provided, That her Majesty may before the 29th of September 1712. appoint such Persons to be Commissioners to execute this and the said former Act, as she shall think fit. *Ibid.*
- No Burials to be in new Churches.** No Burial shall be in or under any of the said New Churches, and the Commissioners shall ascertain the Fees to be paid to the Rector and other Officers of each Church. for every Burial in any of the Church Yards intended to be purchased. *Ibid.*

CHURCHES.

9

A Clause for applying the Sum of 4000*l.* per ann. for 4000*l.* for repairing and finishing the Collegiate Church of *St. Peter Westminster*, according to the 9 *Anne cap. 22.* *Ibid.* *Abby.*

Another Clause for rebuilding and finishing the Parish Church of *St. Mary Woolnoth.* *Ibid.* *St. Mary Woolnoth.*

Whereas the vacant piece of Ground about the Maypole in the *Strand*, is deemed a proper place for building one of the fifty new Churches upon; which cannot be appropriated to the use without the Aid of Parliament; It is enacted, That so much thereof as contains in length from East to West One hundred thirty eight Foot, and in breadth from North to South Sixty Foot, shall be vested in the Commissioners for the building the said New Churches, their Heirs and Assigns for ever, to be appropriated for building one of the said New Churches upon *Sat. 12 Anne cap. 17.*

It is enacted; That in every New Church to be erected in the Parish of *Stepney*, The first Rector shall be appointed by the Principal and Scholars of *King's Hall* and *College of Brazen Nose* in the University of *Oxford*, and their Successors. *Ibid.* *Rectors in the New Churches in Stepney to be appointed by Brazen Nose College.*

The Right of *John Walker* and *Elizabeth* his Wife, their Children, and right Heirs, and of *Mary Walker*, to the Ground or Soil lying over against several Houses of theirs situate in *Little Drury Lane* in the *Strand* is saved. *Ibid.* *Walkers their Right saved.*

After the 27th of *September 1724.* and before the 28th of *September 1725.* there shall be paid for all Coals brought into the Port of *London*, the Duties following; viz. for every Chaldron three Shillings, and for such Coals as are sold by the Tun, for every Tun three Shillings; which said Sum, shall be paid to his Majesty, in the same manner and under such pains, as are mention'd and refer'd unto by any Act or Law now in Force for levying Duties upon Coals or Culm brought into the said Port of *London.* *Stat. 1 Geo. c. 23.*

And all such Sums as shall be rais'd by this Act, shall be brought into the Receipt of the *Exchequer*, and appropriated for providing due Maintenances for the Ministers of the New Churches to be erected in and about the Cities of *London* and *Westminster.* *Ibid.* *For a provision for the Ministers of the new Churches.*

Except an Hundred Chaldrons to be used in the Hospital at *Chelsea.* *Ibid.* *Chelsea College exempted.*

And his Majesty is impowered to appoint a new Set of Commissioners for building the said Churches. *Ibid.* *New Commissioners to be appointed.*

And the said Commissioners are impowered to assign a Sum out of the Monies to be rais'd by the 9 *Anne*, for rebuilding of the Parish Church of *St. Mary Woolnoth*, which shall for it.

shall be replac'd and made good out of the Monies to be rais'd by 10 *Annæ. Ibid.*

4 *Geo. c. 5.* The Commissioners for building fifty New Churches, are required to apply the Sum of 6126 *l. 1 s. 5 d.* to the Michael Cornhill compleating and finishing the Tower of the Church of St. Michael Cornhill, out of the Duties granted by the 9 *A. of the new Stat. 4 Geo. c. 5.*

Church Money.

4 *Geo. c. 14.* The Commissioners for building fifty New Churches, are impow'ed to cause the Church of St. Giles in the Fields to be rebuilt, in such manner as they shall think fit; and the same to be deem'd and taken to all Intents and Purposes as one of the fifty New Churches: 4 *G. c. 14.*

the new Church Money. Saving for William Baynbrig.

And whereas William Baynbrig, Esq; did erect the South Gallery in the present Church, and gave the Profits arising thereby to the Poor, it is enacted, That a South Gallery shall be built in the new Church, and the Profits shall be applied to the same Uses as those of the present South Gallery are applied. *Ibid.*

5 *Geo. c. 9.*

Duty of 3 *s.* per Chaldron on Coals from 1725 to 1751.

After the 27th of September 1725. and before Lady Day 1751. there shall be paid for all Coals brought into the Port of London, over and above all other Impositions, the Duties following; viz. for every Chaldron three Shillings, and for every Tun of such Coals as are sold by the Tun, three Shilling. *Stat. 5 Geo. c. 9.*

To be under the management of the Commissioners of the Customs.

Which said Duties, shall be under the Management of the Commissioners of the Customs, according to such Orders as shall be given them by the Treasury, and shall be levied and paid in such manner and under such pains, as are mention'd and refer'd unto by any Acts or Laws now in Force, for levying Duties upon Coals brought into the said Port of London. *Ibid.*

Saving for Chelsea.

Provided this Act do not extend to an Hundred Chaldron brought yearly into the Hospital at Chelsea; and all Monies arising by the said Act of the 9 *Annæ*, or the 1 *Geo.* or this present Act, shall after Lady Day 1719. and before Lady Day 1751. be brought into the Exchequer (other than such Surplus Monies as are to be reserv'd for the future Disposition of Parliament) which shall be appropriated to the respective Uses in this Act prescribed. *Ibid.*

360000 *l.* assign'd for finishing the 50 new Churches.

After Lady Day 1719. for the Term of thirty two Years next ensuing, the full Sum of 210000 *l.* out of the Monies of the said several Duties on Coals, shall be yearly applied to be a particular Fund and Security for answering and paying as well the Principal as the Interest of the Sum of 360000 *l.* assign'd by this Act for the finishing the said fifty new Churches. *Ibid.*

CHURCH Service.

II

And the Treasury are impowered to borrow the said Borrowing Sum of 360000*l.* upon the said yearly Fund of 21000*l.* Clause. at 4 per Cent. *Ibid.*

And all the Monies arising by way of Loan, and all the Monies of the same Fund, except what is to be applied for the Re-payment of the Principal and Interest of the Loans which shall be made thereupon, shall be applied towards the building the said Churches, purchasing of Scites, &c. *Ibid.*

Provided that the Principal of such Loans, together with the Monies supplied out of the same Fund it self, do not exceed the said Sum of 360000*l.* *Ibid.*

And the Treasury are required to issue and pay such Treasury to Sums as the said Commissioners shall direct, for building issue the said the said Churches and other Services before mention'd. Money, as the out of the Monies arising by way of Loan, and out of the Commission- Monies of the said Fund of 21000*l.* per Ann. *Ibid.* ers shall

Provided that his Majesty may from time to time con- direct, stitute such Persons to be Commissioners to execute the Crown to ap- Powers in the said recited Acts, and this present Act, as point Com- he shall think fit. *Ibid.* missioners.

The Residue of the Monies arising by the said Duties Residue of the on Coals, is made a Fund for a Lottery for raising 500000*l.* Monies arising for the use of his Majesty, &c. *Ibid.* by Coals for

32 Years, applied to a Lottery.

Church Service.

ALL Ministers, in any Cathedral, or Parish Church, 2 & 3 E. 6. c. 1. or other place within this Realm, shall after the The Common Feast of Pentecost next, say and use the Mattens, Evensong, Prayer only to Celebration of the Lord's Supper, and Administration of each of be us'd in the Sacraments, and all their common and open Prayer, in Churches. such Order and Form as is mention'd in the Book of Com- mon Prayers hereby establish'd, and none other or other- wise. Stat. 2 & 3 Ed. 6. cap. 1.

And if any Minister shall refuse to use the said Com- Penalty of mon Prayers, or to administer the Sacraments in such depraving it Order as is set forth in the said Book, or shall use wilfully by a Minister and obstinately, standing in the same, any other Rite, or using any Ceremony, Order, Form, or Manner of Mass, openly other, or privily, or Mattens, Evensong, Administration of the Sacra- ments, or other open Prayer, than is mention'd and set forth in the said Book, (by open Prayer is meant that Prayer which is for other to come unto or hear, either in common Churches, or private Chappels, or Oratories, commonly

commonly call'd *The Service of the Church*) or shall declare or speak any thing in derogation or depraving of the said Book, or any thing therein, he shall forfeit for his first Offence, the profit of such one of his Spiritual Benefices as the King shall assign, for one whole Year, and suffer Imprisonment for six Months: For the second Offence, he shall suffer one Years Imprisonment, and be depriv'd *ipso facto* of all his Spiritual Promotions, and the Patrons or Donors may present again: And if such person shall offend a third time, he shall suffer Imprisonment during Life. And if the Offender shall have no Spiritual Promotion, he shall for the first Offence, suffer six Months Imprisonment; and for his second Offence, be imprison'd for Life. *Ibid.*

The penalty
of Ridiculing
or Interrupt-
ing the said
Service.

And if any person whatever, shall in any Interludes, Plays, Songs, Rhymes, or by other open Words, declare any thing in the derogation, depraving or despising of the same Book, or shall by open Deed or Threatnings, compel or procure any Minister to sing or say any common and open Prayer, or to administer any Sacrament, otherwise than is mention'd in the said Book, or shall interrupt or let any Minister to say common and open Prayer, or to administer the Sacraments in the manner aforesaid, he shall forfeit for the first Offence ten Pounds, and for the second twenty Pounds, and for the third Offence, shall forfeit all his Goods and Chattels to his Majesty, and suffer Imprisonment during Life. *Ibid.*

And if any Offender shall not pay the Penalty for his first Offence, within six Months after Conviction, he shall instead thereof, suffer Imprisonment for three Months; and every Offender not paying the Penalty incurred for his second Offence, within six Weeks after Conviction, shall be imprison'd for six Months. *Ibid.*

2 & 3 Ed. 6.
c. 1. Justices
of Assize to
hear the said
Offences.

Justices of Oyer and Terminer, or Justices of Assize, are impowered to hear and determine all Offences against this Act. *Ibid.*

Provided that it shall be lawful for every Archbishop and Bishop, to associate himself to the said Justices at their general Sessions, within his Diocese, to hear and determine the Offences aforesaid. *Ibid.*

The said

Prayers may Tongue, may say and have the said Common Prayers in be used in the such Tongue, saying the same privately. *Ibid.*

learned Lan- And in the Universities. It shall be lawful in the pri- guages by pri- vate Chappels of the Colleges (to say the said Common vate Persons, Prayers, (those at the Sacrament excepted) in the Greek, and in the U- Latin, or Hebrew Tongues. *Ibid.*

niversities.

Pro-

Provided it shall be lawful to use openly any Psalms or Psalms or Prayers taken out of the Bible at any due time, not let- Prayers taken
ting or omitting any part of the Common Prayer. *Ibid.* out of the Bi-

And no Person shall be prosecuted for offending against ble may be
this Act, unless he be indicted at the next Assizes after used in Chur-
the Offence. *Ibid.* ches.

Provided, All Peers shall be try'd by their Peers. *Ibid.* Peers to be

Provided, Chief Officers of Cities and Towns Corpo- try'd by Peers.
rate, where Justices do not commonly repair, may hear
and determine the said Offences within fifteen Days after
the Feasts of *Easter* and *St. Michael* yearly. *Ibid.*

Provided, That all Persons having Ecclesiastical Juris- Ecclesiastical
diction shall have Power to enquire of all Offences with- Judges may
in mentioned, and to punish the same by Censures and determine the
Process as heretofore hath been used by the Ecclesiastical said Offences.
Laws. *Ibid.*

• Provided, That none be punished twice for the same None punish-
Offence. *Ibid.* ed twice.

Every Person shall resort to his Parish Church or 5 & 6 E. 6.
Chappel accustomed, on *Sundays* and *Holidays*, on pain c. 1. All per-
of being punished by Ecclesiastical Censures, Stat. 5 & 6 sons to resort
Ed. 6. cap. 1. to their Parish

And the Book of Common Prayer, as also the Form of Churches.
consecrating of Archbishops, Bishops, Priests and Dea- Liturgy esta-
cons is annexed to and made part of this Act, and the blish'd.
said former Act of the 2 & 3 Ed. 6. is hereby confirmed.
Ibid.

And if any Person shall willingly hear and be present at Penalty of be-
any other Form of Common Prayer, or Administration ing present at
of Sacraments. or of any other Rites than are established any other
by the said Book, he shall for the first Offence suffer six Prayers, six
Months Imprisonment, for the second, Imprisonment for Months Im-
a Year, and for the third Offence Imprisonment for Life. prisonment.
Ibid.

If any Person shall by Words only, quarrel, chide or 5 & 6 E. 6.
brawl in any Church or Church Yard, the Ordinary up- c. 4. Quarrels
on proof thereof by two Witnesses, may suspend the Of- in Churches
fender; That is to say, if a Layman *ab Ingressu Ecclesie*; punish'd.
and if a Clerk, from the ministration of his Office at
his Discretion.

And if any Person shall smite or lay violent Hands Strikers to be
upon another, either in the Church or Church Yard, he excommuni-
shall be *ipso facto* deemed Excommunicate. *Ibid.* cated.

And if any Person shall maliciously strike another with Striking in the
Weapon in the Church or Church Yard, or shall draw Church with
any Weapon with an intent to strike, and be convicted a Weapon, the
thereof before Justices of Assize of *Oyer* and *Terminer*, or Penalty.
Justices of Peace in their Sessions, he shall be adjudged to
have

have one of his Ears cut off, and stand *ipso facto* excommunicated. *Ibid.*

The said Statutes repealed 6 Ed. 6. c. 1. are Repealed.

1 M. cap. 2. If any Person shall disturb or disquiet a licensed Preacher in his Sermon, or any lawful Priest preparing or celebrating Divine Service, or abuse the Sacrament of the Altar, such Offender may be apprehended by any Parish Officer, or other Person present, and he shall be committed to Prison by any Justice of Peace, who with one other Justice within six Days after, shall examine the Offence, and the Offender being convicted by two Witnesses shall be committed to the Town or County Goal respectively, for three Months, and until the Quarter Sessions next after, where he may be discharged on his Submission, or be continued in Prison till he shall submit, Stat. 1 M. Sess. 2. c. 3.

And if any Person Rescue such Person so apprehended he shall suffer the like Imprisonment, and pay a Fine of 5 l. *Ibid.*

And if such Offender shall not be apprehended, the Parish where he was suffered to escape shall incur the pain of 5 l. *Ibid.*

Provided. That this Act shall not take away the Jurisdiction of the Ecclesiastical Courts. *Ibid.*

Provided that none be punished twice for the same Offence. *Ibid.*

1 Eliz. cap. 2. The Statute of Repeal of 1 M. c. 2. so far as concerns the Book of Common Prayer, and the Rites and Ceremonies appointed thereby, is declared to be void, and all Ministers are appointed to perform Divine Service, and administer the Sacraments as is directed by the said Book of Common Prayer established by the 5 & 6 Ed. 6. c. 1. with the Alteration or Addition only of certain Lessons to be used every Sunday, and the Form of the Litany altered and corrected, and two Sentences added in the delivery of the Sacrament. Stat. 1 El. c. 2.

1 Eliz. c. 2. If any Minister shall refuse to use the said Common Prayers, in such Order as is set forth by the said Book, or shall use any other Rite, Ceremony, Order, or Form of Prayer, or Administration of the Sacraments, in any Church or Chappel, or shall declare or speak any thing in derogation of the said Book, or any thing contained therein, he shall forfeit for the first Offence, the Profits of his Living, or speaking in derogation thereof, to forfeit the profits of his Living for a Year, and suffer six Months Imprisonment.

of all his Spiritual Promotions for one Year. and suffer Penalty for a six Months Imprisonment; for his second Offence, he second Offence shall suffer one Years Imprisonment, and be depriv'd *ipso facto* of all his Spiritual Promotions, so that the Patron or Donor may present again; and for a third Offence, he For a third shall be depriv'd *ipso facto*, and suffer Imprisonment for Offence. Life. *Ibid.*

And if the Offender shall have no Benefice or Spiritual Unbeneficed Promotion, he shall for the first Offence suffer one Years Minister to be Imprisonment, and for the second Offence, be imprison'd imprisoned a during Life. *Ibid.* Year for the

If any person shall in any Interludes, Plays, Songs, first Offence. Rhymes, or other open Words, declare any thing in de- None to speak rogation, depraving or despising of the same Book, or contemptu- any thing therein contain'd, or shall compel or procure ously of the any Minister to say any other Common Prayer, or admi- Common nister any Sacrament, otherwise than is appointed by the Prayer, or to said Book, or shall interrupt any Minister in using or compel a Mi- nister to use the first Offence, an Hundred Marks; for the second, another Form, four Hundred Marks; and for the third Offence, all his or to inter- Goods and Chattels, and be imprison'd for Life. *Ibid.* rupt the Ser-

If any person do not pay the pain inflicted for the vice, on pain first Offence, within six Weeks after Conviction, he shall of 100 Marks. suffer six Months Imprisonment instead thereof. *Ibid.* Second Offence

And if the Offender do not pay the pain inflicted for 400 Marks. the second Offence, within six Weeks after Conviction, Third Offence he shall suffer one Years Imprisonment. *Ibid.* all his Goods.

Every person that shall not resort to his Parish Church Default of or Chappel, accustom'd upon every Sunday and Holiday, paying the pe- and there abide orderly and soberly, shall incur the Cen- nalty for the sures of the Church, and forfeit twelve pence for every first Offence, Offence; to be levied by the Church Wardens by Distress, 6 Months Im- to the use of the Poor. *Ibid.* prisonment.

Justices of Oyer and Terminer, or of Assize, are autho- Default of rized to hear and determine all Offences against this Act, paying the se- and award Execution of the same. *Ibid.* cond pain. a

* Provided that the Bishop may associate himself with Years Impri- the said Justices for hearing and determining the Offen- sonment. ges aforesaid. *Ibid.* None to ab-

† No Person to be prosecuted unless he be indicted at the sent from next Assizes after the Offence. *Ibid.* Church, or

|| Provided, That all Peers shall be tried by their Peers behave them- selves for the third Offence above mentioned. *Ibid.* selves disor- derly there, on

* 1 Eliz. c. 2. Associated with the Bishop.

† Prosecution to be at the next Assizes.

|| Peers try'd by Peers.

Pro mine these Offences.

Mayors, &c. Provided, That all Mayors and other Head Officers, to determine where Justices of Assize do not commonly repair, have Offences, power to hear and determine the Offences abovesaid yearly, within fifteen Days after *Easter* and *Michaelmas*. *Ibid.*
 of Assize don't The Jurisdiction of the Ecclesiastical Courts, as to the come. Offences aforesaid is saved. *Ibid.*

Jurisdiction Provided none be punished twice for the same Offence. *Ibid.*
 of Spiritual Provided also, That such Ornaments of the Church, Courts saved. and of the Ministers, shall be used as were used in the None punish'd 2 *Ed. 6.* until the Queen shall order otherwise by the Advice of her Ecclesiastical Commissioners, or of the Metropolitan. *Ibid.*

The same Ornaments to be And the Queen by the like Advice is impowered to us'd as in the ordain such further Ceremonies or Rites as may be for the edifying of the Church. *Ibid.*

Ed. 6. till altered by the All Laws and Statutes whereby any other Service is established, are declared to be utterly void. *Ibid.*

Queen and the Every person under the degree of a Bishop, who shall Archbishop. pretend to be a Priest or Minister, by reason of any other Laws for any Form of Consecration, then that set forth in the time of King *Ed. 6.* or now used in this Reign, shall in the presence of his Ordinary where his Benefice lies, declare his Assent, and subscribe to all the Articles of Religion 13 *Eliz. c. 12.* established in the Year 1562. and shall bring from his Ordinary a Testimonial in Writing, of such Assent and Subscription. and on some Sunday in the time of Divine Service in the Afternoon, in every Church, where by reason of any Ecclesiastical Living, he ought to attend, read the said Testimonial and Articles, upon pain of being *ipso facto* deprived and all his Promotions void. *Stat. 13 Eliz. c. 12.*

Every Minister shall declare his Assent to, and subscribe the 39 Articles before the Ordinary, and have a Testimonial thereof.

And if any Ecclesiastical Person shall advisedly maintain or affirm any Doctrine, directly, contrary, or repugnant to any of the said Articles, and being convented before his Ordinary, shall persist therein, or not revoke his Error, or after such Revocation, again affirm such untrue Doctrine, it shall be lawful to the Ordinary to pronounce Sentence of Deprivation against such Offender, who shall be thereby deprived. *Ibid.*

No person shall be * admitted to a Benefice with Cure, except he then be 23 Years of Age at least, and a Deacon, and shall have subscribed and read the said Articles, and declared his Assent as aforesaid: And every person

to be admitted to a Benefice, except within two Months he do read † the said Articles, and declare his Assent, and contrary to the

said Articles, he may be deprived. * None to have a Benefice under 23 Years old and a Deacon, and giving his assent as aforesaid. † Articles to be read by the Incumbent in 2 Months, and the Sacraments administered within 1 Year, on pain of Deprivation.

be admitted to administer the Sacraments within one Year after his Induction, he shall be *ipso facto* depriv'd. None to preach or give the Sacrament
Ibid.

None shall be made Minister, or be admitted to under 24, or preach or administer the Sacraments, being under Twenty without a Testimonial of his Orthodoxy, or unless professing the Doctrine contained in the said Articles; nor he can give an account of his Faith in Latin, according to the said Articles, or have his Faith in special Gift and Ability to be a Preacher, nor shall be admitted to the Order of Deacon or Ministry, unless he gifted, Deacon subscribe the said Articles. to subscribe
Ibid.

None shall have a Benefice with cure of the value of the 39 Ar- 30 l. per ann. unless he be a Batchelor of Divinity, or a Preacher allowed by some Bishop, or by one of the Uni- None to have a Benefice of
Ibid.

All Admissions, Institutions or Inductions, and all To- 30 l. per ann. lations, Dispensations, Qualifications, and Licenses to unless a Batchelor of Divinity, or licen- the contrary hereof shall be void. All licenses, &c
Ibid.

Provided no Lapse shall accrue till six Months after Notice of such Deprivation given to the Patron by the Ordinary. to the contra-
Ibid.

An Act for the solemnizing the 5th of November as a Day of Thanksgiving for the Deliverance from the Pow- ry void.
der Plot. Stat. 3 Jac. c. 1. No lapse till

An Act for observing the 29th of May annually, as a Thanksgiving for the Restoration. Stat. 12 Car. 2. c. 14. Months no-

The 30th of January is enjoined to be kept as a Fast on account of the Murder of King Charles I. Stat. 12 Car. 2. 13 El. c. 12. tice.
cap. 30. 3 Jac. c. 1.

All Ministers shall use the Common Prayer, and ad- 5th Novemb. minister the Sacrament in such Order and Form as is 12 Car. 2. c. 14. mentioned in the Book annexed and join'd to this Act. 29th May.
Stat. 14 Car. 2. c. 4. 12 Ca. 2. c. 30.

And every Minister who hath any Ecclesiastical Bene- 30th Jan. fice or Promotion shall, in his own Church or Chappel, 14 Car. 2. c. 4. upon some Lords Day before the Feast of St. Bartholomew Common 1662. publicly read the Morning and Evening Prayer Prayers re- appointed by the said Book, and before the Congregation established, declare his unfeigned assent and consent to the use of all Enjoined to things in the said Book prescribed, in these Words and no be read and other. assented to by
Ibid.

I A. B. do hereby declare my unfeigned Assent and all Ministers Consent to all and every thing contained and prescribed before St. Bar- in and by the Book, entituled, *The Book of Common Prayer tholomew 1662. and Administration of the Sacraments, and other Rites and Cere-* on pain of De- monies privation,
g

Form of As- monies of the Church, according to the use of the Church of Eng-
sent. land ; together with the Psalter and Psalms of David, pointed
as they are to be said or sung in Churches ; and the Form or
Manner of Making, Ordaining and Consecrating of Bishops, Priests
and Deacons. *Ibid.*

14 Ca. 2. c. 4. And every such Person who shall neglect or refuse to
do the same, and in the time aforesaid, shall *ipso facto*, be
beprived of all his Spiritual Promotions. *Ibid.*

Every Mini- And every Person who shall hereafter be presented,
ster within 2 or put into any Ecclesiastical Benefice, shall in the Church
Months after or Chappel belonging to his Benefice or Promotion, with-
Induction in two Months after he shall be in the actual Possession
shall read the of the same, upon some Lords Day, publicly read
whole Service, the Morning and Evening Prayer appointed to be
and declare read by the Book of Common Prayer at the times therein
his Assent on appointed ; and shall afterwards declare his unfeigned As-
pain of Depri- sent and Consent in manner aforesaid, to all things there-
vation. in, on pain of being depriv'd of all his Benefices and Pro-
Beneficed motions: And from thenceforth every Patron and Donor
Clergy to read may present or collate again, as tho' the Offender were
the Common dead. *Ibid.*

Prayer, and And where any Incumbent doth reside on his living,
administer and keep a Curate, such Incumbent, shall once at least,
the Sacra- publicly read the Common Prayers and Service, and ad-
ments once a minister each of the Sacraments in his Parish Church or
Month on Chappel, in such manner as is appointed by the Book of
pain of 5 l. Common Prayer, on pain of five Pounds, to the Use of
Conviction by the Poor of the Parish ; of which Offence, he may be
two Witnesse convicted by two Witnesse, before two Justices of Peace,
before two Ju- such Penalty to be levied by Distress and Sale, by War-
stices, and the rant from the said Justices, to the Church Wardens or
Penalty levy'd Overseers of the Poor, in default of Payment thereof
by distress and within ten Days. *Ibid.*

sale. And every Dean, Canon and Prebendary, and all Ma-
Deans, Pre- sters, and other Heads, Fellows, Chaplains, and Tutors
bendaries, of, or in any College, Hall, House of Learning, or Hos-
Heads of pital ; and every publick Professor and Reader in the
Colleges, Tu- Universities, and in every College elsewhere ; and every
tors, Ministers Parson, Vicar, Curate, Lecturer, and every other person
and School- in holy Orders, and every Schoolmaster, and other per-
masters, to son instructing Youth, in any House or private Family,
subscribe the shall at or before his Admission, subscribe the Declaration
following De- following.
claration.

N. B. *This* I A. B. do declare, that it is not lawful upon any Pretence
Clause of Non- whatsoever, to take up Arms against the King ; and that I do
resistance was abhor that traiterous Position, of taking Arms by his Authority,
repealed at the against his Person, or against those that are commissioned by him :
Revolution. and

CHURCH Service.

19

And that I will conform to the Liturgy of the Church of Eng- 14 Car. 2. c.4.
land, as it is now by Law established. Ibid. To be subscri-

Which Declaration shall be subscribed by every of the bed before the
said Members of the Universities, before the Vicechan- Vicechancel-
cellor or his Deputy, and by every other Person before lor or Ordi-
the Bishop or Ordinary, on pain of forfeiture of their nary, on pain
respective Benefices and Promotions. Ibid. of Deprivati-

And if any Schoolmaster or Instructor of Youth in any on.
private House or Family, shall teach as a Tutor or School- Schoolmaster
master, before License obtained from his Ordinary, and teaching
before such Subscription made as aforesaid, he shall for without Li-
the first Offence suffer three Months Imprisonment, and cense, and ma-
for every second and other Offence, shall suffer three king such
Months Imprisonment, and forfeit 5 l. to his Majesty. Subscription,
Ibid. to be impri-

And every Parson, and Vicar, Curate and Lecturer, son'd three
shall after such Subscription procure a Certificate under Months, 2d
the Hand and Seal of his Ordinary, and publickly read Offence for-
the same with the Declaration aforesaid, upon some feits 5 l.
Lord's Day within three Months, in his Parish Church Minister to
before the Congregation, upon pain of losing such Bene- have a Certi-
fice, Curacy or Lecture, which shall be ipso facto void. ficate of his
Ibid. Subscription,

Provided, that after the said Feast of St. Bartholomew, 1662. and to read it
No Incumbent who is in Possession of any Benefice, and in the Church
shall not then have received Holy Orders, shall hold or within three
enjoy any Benefice or Promotion, but be, ipso facto, disa- Months on
bled and deprived of the same. Ibid. pain of De-

And no Person shall thenceforth be capable to be ad- privation.
mitted to any Benefice or Promotion, or shall presume to Incumbents
Consecrate and Administer the Lord's Supper, before he not having
be episcopally ordained a Priest, unless he have formerly taken Orders
been so ordained, on pain of 100 l. one Moiety to the their Prefer-
King, and the other between the poor of the Parish and ments void.
the Prosecutor, and of being disabled to take Priests Or- None to be
ders for one Year next after. Ibid. admitted to a

Provided, This Act doth not extend to the foreign re- Benefice or to
formed Churches allowed by his Majesty. Ibid. give the Sacra-

Provided, That no Title to present by Lapse shall ac- ment, but a
true by any Voidance or Deprivation ipso facto, till fix Priest on pain
Months after Notice given by the Ordinary, or such of 100 l.
Sentence or Deprivation be publickly read in the Parish Not to extend
Church whereof the Incumbent shall be deprived. Ibid. to foreign

And no Form of Common Prayers, Administration of Churches.
Sacraments, Rites or Ceremonies, shall be openly used in No Lapse be-
any Church, Chappel, or other publick Place, of, or in fore notice of
any College or Hall in the Universities, or in the Colleges sentence pub-
of Westminster, Winchester or Eaton, other than is prescribed listed.

No other Forms or Rites to be used in Colleges. by the said Book; and the Head of every such College or Hall, shall within one Month after the Feast of St. Bartholomew, or within one Month after his Election or Admission, publickly in his proper Church or Chappel, in the presence of the Fellows and Schollars, subscribe the said Thirty Nine Articles of Religion, mention'd in the 13 *Eliz. cap. 12.* and declare his unfeigned Assent and Consent to the said Book, and Approbation of the said Articles, and to the use of all the Prayers, Rites, &c. thereby prescribed, according to the Form aforesaid, and declare their Assent to the all such Heads of any of the said Houses, shall once at Common least in every Quarter publickly read the Morning Prayer Prayer within appointed by the said Book, in the Church or Chappel, a Month after upon pain of being suspended six Months by the Visitor; Admission, and if he shall not within six Months after such Suspension and read the on subscribe the said Articles and Book, and declare his Morning Ser- Consent thereto, and read the Morning Prayer aforesaid, vice once a such Government shall be *ipse facto* void. *It.*

Quarter, on pain of Suspension. Provided, It shall be lawful to use the said Common Prayers in the Chappels of the said Colleges and Halls, and in the Convocations of either Province in *Latin. Ibid.*

Prayers in Colleges and Convocations And no Person shall be received or allowed to preach as a Lecturer in any Church or Chappel, unless licensed by the Ordinary under his Seal, and shall read in his presence the said Thirty nine Articles with Declaration of *tin.* his unfeigned assent to the same. *Ibid.*

Lecturer to be licensed and declare his assent to the Articles. And every Person who shall be licensed or received as a Lecturer, shall before he preacheth publickly, read the Common Prayers appointed to be read by the said Book, and publickly declare his Assent and Approbation thereof, and to the use of all the Prayers or Rites, &c. And to read therein contained; and also shall upon the first Lecture the Service, day of every Month, before the Sermon, publickly read and declare the Common Prayers appointed to be read for that time, his Assent to and declare his unfeigned Assent as aforesaid, upon pain it before he of being disabled to preach any Lecture, until he shall preaches, and publickly read the said Common Prayers, and conforming to read the all Points to the intent of this Act. *Ibid.*

Service once a Month, and declare his Assent to it, on pain of Disability till he conforms. * Provided that if such Lecture is to be preached in any Cathedral or Collegiate Church or Chappel, it shall be sufficient for the said Lecturer to declare his Assent and Consent to the said Book, in the Form aforesaid. *Ibid.*

† And every Person by this Act disabled to preach such Lecture, who shall presume to preach, shall suffer three Months

* In a Cathedral sufficient to declare his Assent. † Lecturer preaching who is so disabled, to be imprisoned three Months, by two Justices on the Ordinaries Certificate.

Month

Months Imprisonment, and any two Justices of the Peace 14 Car. 2. c. 4.
of the County, and the Mayor or Head Officer of any
Town Corporate upon Certificate from the Ordinary, Common
shall commit the Offender to Jail accordingly. *Ibid.* Prayer to be

Provided, That before any Lecture shall be preached, read before
the said Common Prayer for that time of the Day shall every Lecture,
be publickly read by some Priest or Deacon, and the Le- and the Le-
cturer then to preach shall be present thereat. *Ibid.* cturer present.

Provided that this Act shall not extend to the Univer- Not to extend
sity Churches, when any Lecture is preach'd as the pub- to Univerfity
lick Univerfity Lecture. *Ibid.* Lectures.

And the Laws and Statutes heretofore made for Uni- Former Sta-
formity, and the Form of ordaining and consecrating of tutes for Uni-
Bishops, Priests, and Deacons, annex'd to this Statute, formity en-
are hereby confirm'd. *Ibid.* forced.

Provided that all Prayers and Collects which relate to Prayers for
the Royal Family, may be alter'd from time to time, and the Royal Fa-
fitted to the present Occasion by lawful Authority. mily to be al-
tered, Com.

Proviso for translating the Common Prayer into the tered, Com.
Welsh Tongue, and furnishing every Church in *Wales*, Prayer to be
where the *Welsh* is commonly used, with a Book. *Ibid.* done into

And the Deans and Chapters of every Cathedral and *Welsh*.
Collegiate Church, shall before the 25th of December 1662. Copies of this
obtain under the Great Seal, a true Copy of this Act, and Act to be kept
of the said Book annex'd thereto, to be kept and pre- in all Cathe-
serv'd in Safety for ever, and to be produced in any drals, in the
Court of Record, when required: And the like Copies Courts of
shall be deliver'd into the respective Courts at *Westminster*, *Westminster*,
and into the Tower of *London*, to be preserv'd among the and in the
Records, and produc'd in Courts, as need shall require. Tower.
Ibid.

The King's Professor of Law at *Oxford*, shall not be Saving for the
prejudiced by this Act, as to the Prebend of *Skipton*, an- King's Pro-
nex'd to his Office. *Ibid.* fessor at *Ox-*

All Subscriptions hereafter to be made to the 39 Arti- ford.
cles, by this Act, or any other Law in force, shall be 30th Article
construed and applied (as to the 36th Article) to the Book altered by this
containing the Form of Consecration, in this Act menti- Act.
tioned, in such manner as the same did before extend to
the Book set forth in the Reign of *Ed. 6.* *Ibid.*

So much of the Declaration contain'd in the 13 & 14 1 W. & M. c. 8.
Car. 2. c. 4. as is hereafter specified, viz. *I A. B. declare, Declaration of*
that 'tis not lawful upon any pretence whatsoever, to take Arms Nonresistance
against the King; and that I do abhor the traiterous Position of repealed.
taking Arms by his Authority, against his Person, or against
those that are commissioned by him, shall not from henceforth be
required. Nor shall any person suffer any pain, or lose by
the not taking the said recited part of the said Declara-
tion.

1 W. & M. c. Neither the Statutes of the 1, 23, or 29 Eliz. or the
18. Dissenters 3 Jac. 1. or any other Statutes made against Recusancy,
 exempted except the 25 Car. 2. for preventing Dangers that may happen
 from the penal from Popish Recusants, and the 30 Car. 2. for the more effectu-
 Laws. al preserving the King's Person, &c. shall extend to any Per-
 Who shall sons dissenting from the Church of England, who shall
 take the take the Oaths of Allegiance and Supremacy, pursuant to
 Oaths, an Act of this present Sessions, for abrogating the Oaths
 of Supremacy and Allegiance, and appointing other
 And make the Oaths, and make the Declaration required by the 30 c. 2.
 Declaration cap. 1. Stat 2. nor shall Persons so qualifying themselves,
 30 Car. 2. be liable to the Pains and Forfeitures in the 35 Eliz. c. 1.
 or the 22 Car. 2. cap. 1. or be liable to be prosecuted in
 any Ecclesiastical Court for Non-conformity. Stat. 1 W.
 & M. c. 18.

Dissenting And no dissenting Preacher who shall make the said
Teachers ex- Declaration, and take the Oaths aforesaid, and subscribe
empted from the 39 Articles, except the 34th, 35th, and 36th, and
 the Penal the following Words in the 20th, viz. (*The Church hath*
 Laws, on sub- power to decree Rights and Ceremonies, and authority in Contro-
 scribing part versies of Faith, and yet) shall be liable to the Pains in the
 of the 39 Ar- 17 Car. 2. cap. 2. for restraining Non-conformists to in-
 ticles. habit Corporations, or to the Penalty of an Hundred
 Pounds inflicted for Non-conformity, by the 13 & 14
 Car. 2. cap. 4. Ibid.

Anabaptist And all Preachers who scruple Infant Baptism, and
Teachers also shall take the said Oaths, and make the Declaration
 indulged, aforesaid, and subscribe the said 39 Articles, except as
 aforesaid, and except part of the 27th Article concerning
 Infant Baptism, shall enjoy all the Benefits of this Act.
And Quakers. as any other dissenting Preacher shall: And all such Dis-
 senters as scruple the taking an Oath, and who shall take
 and subscribe the aforesaid Declaration, and the Decla-
 ration of Fidelity following: viz.

On making
this Declara-
tion,

I A. B. do sincerely promise and solemnly declare, before God
 and the World, that I will be true and faithful to King Wil-
 liam and Queen Mary: And I do solemnly profess and declare
 that I do from my Heart, abhor, detest, and renounce, as impious
 and heretical, that damnable Doctrine and Position, that Princes
 excommunicated, or depriv'd by the Pope, or any Authority of
 the See of Rome, may be depos'd or murder'd by their Subjects
 or any other whatsoever: And I do declare, that no foreign
 Prince, Person, Prelate, State or Potentate, hath, or ought to
 have, any Power, Jurisdiction, Superiority, Pre-eminence or Au-
 thority, Ecclesiastical or Spiritual, within this Realm. Ibid.

And shall subscribe this Profession of the Christian Faith.

I A. B. profess Faith in God the Father, and in Jesus Christ, And this Profession of the true God, and in the Holy Spirit, one God blessed for evermore: And do acknowledge the Holy Scriptures of the Old and New Testament, to be given by Divine Inspiration.

Shall be exempted from all Penalties in the Acts aforesaid against Recusants and Non-conformists, and from all Penalties in the 5 Eliz. cap. 1. for the Assurance of the Queen's Royal Power; and from the Penalties of the 13 & 14 Car. 2. cap. 1. for preventing Mischiefs that may arise by Quakers, &c. and shall enjoy all the Benefits and Advantages which any other Dissenters may, or ought to enjoy, by virtue of this Act. *Ibid.*

Provided that all Laws which require Persons to frequent Divine Service on Sundays, shall remain in force against all Persons that offend against the said Laws, except they resort to some Assembly of religious Worship allow'd by this Act. *Ibid.*

Provided that this Act shall give no Ease or Advantage to any Papist or Popish Recusant, or to any person who shall deny in his Preaching or Writing, the Doctrine of the Trinity, as it is declar'd in the said 39 Articles. *Ibid.*

And if any person shall maliciously or contemptuously come into any Church or Chappel, or other Congregation, permitted by this Act, and disturb the same, or misuse any Preacher, upon proof thereof before any Justice of Peace, by two Witnesses, he shall be bound by Recognizance with two Sureties, in fifty Pounds, and in default of Sureties, be committed to Prison till the next Quarter Sessions; where being convicted, he shall incur the pain of twenty Pounds to the use of the Crown. *Ibid.*

And no Assembly for religious Worship, shall be permitted by this Act, till the place of Meeting be certified to the Bishop, or to the Arch Deacon, or to the Quarter Sessions, and registred or recorded there; the Register and Clerk of the Peace respectively, are required to make Certificates thereof upon demand, for which there shall be paid no greater Fee than six pence. *Ibid.*

Every dissenting Teacher qualified according to the 10 Ann. c. 2. may officiate in any other County, than where he was qualified, so as the place of Meeting be duly certify'd, according to the said Act: But such Preacher, if required, shall produce a Certificate of his Qualification, ny County,

must have a from the Clerk of the Peace where he qualified himself, Certificate of and if required, shall make and subscribe the Declaration his Qualifica- and take the Oaths requir'd by the said Act, before any tion. Justice of Peace, of the County where he so officiates. Stat.

10 Ann. c. 2.

READINGS.

Declaration of Assent and Consent must be absolute.

Where a Minister is required to declare his unfeigned Assent and Consent, &c. this Declaration must be absolute, and not conditional; therefore where a Clerk having read the Articles, and said *I give my Consent unto them, so far forth as they agree with the Word of God.* The Ecclesiastical Court proceeded against him to Deprivation, nor would the Temporal Courts stay the Proceedings, when he applied to them for a Prohibition. *Mich. 33 & 34 Eliz. Smith v. Clark. 3 Cro. 252.*

Where it must be read.

But it has been held, That the reading the 39 Articles in the Church Porch, was sufficient (the Divine Service being read there also) by reason of the Denial of the Key of the Church; tho' it is made a Question, whether the reading the 39 Articles at a reputative Hamlet Church, belonging to the Principal Church, was a sufficient Reading, to satisfy the Statute when the Principal Church was kept shut, that the Clerk could not enter into it. *Watf. Compl. Incum. 112. fol. Ed.*

Ministers Duty to read occasional Prayers, when required by Authority.

Every Minister is as much bound to read Morning and Evening Prayers, on every Holiday, and on the 5th of November, the 30th of January, and the 29th of May, as on the Lord's Day, altho' those Forms of Prayer are no part of the Book of Common Prayer, but added by the King's Order: Indeed the Obligation to read such Forms of Prayer as are occasionally prescrib'd for Days of Fasting or Thanksgiving, seem to be founded not so much on any express Law or Statute, as on the Equity or Reason of the thing, that extraordinary Occasions should be supply'd with special and extraordinary Forms, which may not only be safely used without trespassing

on the Act of the Uniformity, but being drawn up by the Bishops, and recommended by the King's Authority, and containing nothing contrary to the establish'd Forms of Divine Service, they ought to be us'd: And every Minister may undoubtedly be punished for his Contempt of such Authority, in neglecting or omitting them. For the very Acts of Parliament which ordain a publick Fast or Thanksgiving on such stated Days, do imply, that some Provision shall be made for a proper Form, adapted to the Occasion of the Day, and it never was intended, that the Minister should solemnize those Days by an arbitrary Form of his own devising, but in such a common Form as his Superiors should prescribe him. *Watf.* 234.

If in reading the Morning or Evening Prayers, the Minister shall stand or sit when he is appointed to kneel, or shall kneel or sit when he should stand, or shall read the Prayers in other Order than is appointed, or shall omit any thing that is appointed to be read on the respective Days, or read one Day what is to be read on another, or do not administer the Sacraments in such Order and Form as is appointed, he is punishable by the *1 Eliz. cap. 2. Ibid.*

And where any Bishop or Minister shall read the Service, celebrate the Sacraments, confirm, ordain, or marry, for, or in the Stead of another, if he do not perform the same in such Order and Form as are appointed, he transgresses the Acts of Uniformity. *Ibid.*

And the *1 Eliz. cap. 2.* is expounded to extend to such other Prayers only, as are used in hindrance of, or Opposition to the Common Prayer, so that Prayers in the Pulpit are not within the meaning of this Statute, or forbidden by it, because they are tolerated by Authority, and cannot be said to be *obstinately* used; but the Proviso against using any other Form, must be meant of the proper Divine Service in the Desk, which is not to be interrupted or mixt with any arbitrary Forms of private Persons. And by the 55th Canon it is order'd, that before all Sermons, Lectures,

Minister must kneel or sit as is appointed, and read the Prayers in their Order.

And so must he who officiates for another.

Prayers before Sermon no breach of the Act of Uniformity.

tures, and Homilies, the Preachers and Ministers shall move the People to join with them in Prayer, in this Form, or to this Effect, *viz. Ye shall pray for Christ's holy Catholick Church, &c.*

Nonconformists may be indicted or prosecuted by the Ordinary. Note, That all Persons offending against the Acts of Uniformity, are punishable either by Indictment upon the said Statutes, or by the Ordinary.

One deprived for not wearing a Surplice. As to the Ornaments of the Ministers, the Dean of *Christ's Church* was convented before the Ordinary for Schism, because he would not use a Surplice; and was thereupon condemn'd as a Schismatick. *Specot's Case. Mich. 30 Eliz. 3. Leonard 199.*

A Priest must have a License to preach. A Priest by his Ordination, receives Authority to preach and administer the Sacraments, in the Congregation where he shall be lawfully appointed: Yet it is held notwithstanding, that he may not preach without the License of the King or his Ordinary, or of one of the Universities, but a License by the Bishop of any Diocese is sufficient, altho' it be only to preach within his Diocese; the Statute not requiring a License from the Bishop of the Diocese where the Church is. *Pasc. 15 Car. 2. B. R. Brown vers. Spence.*

Acts performed by a Layman, instituted a Living held good, such as marrying, &c. And if a Layman be admitted and instituted to a Benefice with Cure, and doth administer the Sacraments, Marry, &c. these and all other spiritual Acts perform'd by him, during the time held good, that he continues Parson in Fact, are good; and those that are baptiz'd by such Parson, are not to be re-baptiz'd, nor Persons marry'd by him, to be marry'd again to satisfy the Law. *Pasc. 42 Eliz. B. R. Costard v. Windet. 3 Cro. 775.* But Dr. *Watson* is of Opinion, that the Clause in the 14 *Car. 2. cap. 4.* prohibiting any Parson to preach unless he be licens'd, was only design'd for such who are to preach in the Quality of Lecturers, but seems to admit it may extend to all Ministers preaching in any Church, Chappel, or other place of publick Worship, of which the Preacher hath

hath not the Cure. *Watsf. Compl. Incum.* 104,256.
Fol. Ed.

One being committed to Prison upon the Statute of the 1 *M. cap. 3.* for disturbing a Minister lawfully authoriz'd, in his publick Prayer and Preaching, it was agreed, that that part of the Statute which concerns Disturbance in Preaching, is not repeal'd by the Statute of the 1 *Eliz. cap. 2.* but as to Disturbance in Prayer, it is therefore the Commitment being, for both was held to be nought. *Hill. 23 Car. 2. B. R. Dr. Bruce's Case, Aleyn 50.*

The Statute of the 5 & 6 *Ed. 6. cap. 4.* against striking in Churches or Church Yards, is held to extend as well to Cathedral as parochial Churches. *Dethick's Case, Cro. Eliz. 234.*

But notwithstanding, the Statute says, that he who smites another, &c. shall be deemed excommunicate, *ipso facto*, yet there ought to be a Declaration in the Ecclesiastical Court, of the Excommunication, otherwise a Person excommunicated for an Offence against this Statute, could not be absolv'd from such Excommunication, nor receive Absolution from the Ordinary. *Pasf. 4 Car. C. B. Viner v. Eaton, Hetley 86.*

Neither does he that smites another, stand excommunicate, until he be convicted thereof at Law, and such Conviction is transmitted to the Ordinary. *Trin. 23 Car. 2. Dyer v. East. 1 Vent. 146.*

The Court Christian may give Costs *pro expensis litis*, but not *pro damnis* in Proceedings for Offences against this Statute, for if they do, a Prohibition will lie. *Hill. 15 Jac. B. R. Large v. Alton. Cro. Jac. 462.*

Where a Person is assaulted or beaten, he is said to offend against this Law, if he return any Blows, or draw a Weapon in his own Defence, as he may do in other Places. *Hill. 12 Jac. B. R. Francis v. Ley, Cro. Jac. 367.*

In an Indictment for drawing a Weapon in the Church, it must be said with an Intent to strike some Person, otherwise the Indictment will not be

The Act of 1 *M. c. 3.* against disturbing a Preacher still in force.

Quarrels in Churches, &c.

Strikers to be excommunicated.

But must first be convicted at Law.

Spiritual Court cannot give Damages.

One may not strike in his own Defence in a Church, &c.

Indictment, how to be laid,

be good: And tho' it was mov'd that it might be good as for an Assault, yet the whole Court were of Opinion, that the Indictment was void in all, the Conclusion being *contra formam Statuti*; for where an Offence is laid to be against a Statute, the Jury cannot enquire and find an Offence at Common Law. *Pas. 33 Eliz. B. R. Penhallows Case. Cro. Eliz. 231.*

So in an Indictment upon this Statute, for striking in the Church, it must be shew'd, that the striking was with a Weapon, for to strike only where no Weapon is used, is but Excommunication *ipso facto*. *Trin. 12 Car. B. R. Cholmley's Case. Cro. Car. 334.*

And where one takes up a Stone in the Church Yard, to throw at another, or offers to strike another with a Hatchet or Ax, this is said not to be an Offence against this Statute; for these are not such Weapons as may properly be said to be drawn. *Waisf. Compl. Incum. 266. fol. Ed.*

The particular Fact how the Disturbance was made, must be shewn.

And where two Persons were committed to Prison by Justices of Peace, for disturbing a Minister, they were discharg'd upon a *Habeas Corpus*, by the Court of *King's Bench*, for that their Commitment was too general, not shewing the particular Fact wherein they disturb'd, *viz.* By brawling, fighting, or otherwise, there being several Punishments allotted to each; but the Court bound them to their good Behaviour for a Year. *Mich. 29 Car. 2. Rex v. Nichols and Robins. 3 Keb. 803.*

The Ordinary for the Peace of the Church may inhibit any person to make a Disturbance in the Church where he apprehends a Disturbance may be; and if his Inhibition be disobey'd, may excommunicate for the Contempt. *Hutton's Case. Latch. 116.*

Church Wardens may justify the appeasing any Disorder in the Church.

And the Church Wardens may justify the appeasing any Irreverence or Disorder in the Church or Church Yard in time of Divine Service, as the whipping Boys, or the taking off the Hats of those who would irreverently keep them on. *Hamm v. Planner. Trin. 17 Car. 2, 1 Saund. 13. 1 Sider. 301.*

And any person may be indicted for undecent One may be
or irreverent Behaviour in the Church during Di- indicted for
vine Service. *Pas. 15 Car. 2. 1 Keb. 491.* Or a irreverent
Supplicavit may be obtain'd against such Person; Behaviour,
that is, a Writ whereby the Party complain'd of Or bound to
shall be bound to give Sureties to keep the Peace. his good Be-
Pas. 14 Car. 2. The King v. Douglas. 1 Keb. 290. haviour.

And it is said, that even the Minister himself, if
he be guilty of any Misbehaviour in preaching,
or otherwise, in the Church, may be bound to
his good Behaviour. *Howson's Case. Herley 104.*

And besides the several Statutes which expressly Canons
prohibit Disturbances in Churches or Church against Di-
Yards, there are several Canons which are also turbances in
stablish'd by Act of Parliament, that prohibit all Churches.
manner of Disorders and Irreverence in these
Places, of which the three following Canons are
the principal. viz.

Can. 18. No Man shall cover his Head in the Against cove-
Church or Chappel, in the time of Divine Ser- ring ones
vice, except he have some Infirmary, in which Head.
Case, let him wear a Night Cap or Coif. All
manner of Persons then present, shall reverently
kneel upon their Knees, when the general Con- For kneeling,
fession, Litany, and other Prayers are read; &c.
and shall stand up at the saying of the Belief, ac-
cording to the Rules in that Behalf, prescrib'd
in the Book of Common Prayer; and likewise
when in time of Divine Service, the Lord Jesus
shall be mentioned, due and lowly Reverence
shall be done by all Persons present, as it hath
been accustomed, testifying by these outward
Ceremonies and Gestures, their inward Humili-
ty, Christian Resolution, and due Acknowledge-
ment that the Lord Jesus Christ, the true eter-
nal Son of God, is the only Saviour of the
World, in whom alone all the Mercies, Graces,
and Promises of God to Mankind, for this Life
and the Life to come, are fully and wholly com-
pris'd. None, either Man, Woman, or Child, For due At-
of what Calling soever, shall be otherwise at such tendance on
times busied in the Church, than in quiet Attend- the Service.
ance,

ance, to hear, mark, and understand, that which is read, preach'd or ministred, saying in their due place, audibly with the Minister, the Confession, the Lord's Prayer, and the Creed, and making such other Answers to the publick Prayers, as are appointed in the Book of Common Prayer. Neither shall they disturb the Service or Sermon, by walking, or talking, or any other way, nor depart out of the Church, during the time of Service or Sermon, without some urgent or reasonable Cause.

And making the Responses.

None to walk or talk.

Idle People to be turn'd out of the Church Yard.

Can. 19. The Church Wardens or Questmen, and their Assistants, shall not suffer any idle Persons to abide either in the Church Yard, or Church Porch, during the time of Divine Service or Preaching, but shall cause them either to come in, or to depart.

Church Wardens to present those who are disorderly.

Can. III. In all Visitations of Bishops and Archdeacons, the Church Wardens or Questmen and Sidemen, shall truly and personally present the Names of all those which behave themselves rudely and disorderly in the Church, or which by untimely ringing of Bells, by walking, talking, or other Noise, shall hinder the Minister or Preacher.

Church Seats.

And since the principal Conteſts and Quarrels in Churches, are concerning the Parishioner's Rights to such and such Pews and Places in the Church, it may not be improper here to give the Learning upon that Head, and first, It is held that if any Inhabitant and his Ancestors only, have time out of mind us'd to repair an Isle or Seat in the Church, and to sit there with his Family to hear Divine Service, and to Bury there, this makes such Isle or Seat proper and peculiar to his House, and he cannot be displac'd or interrupted by the Parson, Churchwardens, or even the Ordinary himself, but the constant sitting and burying there, without using to repair them, do not gain any peculiar Property therein; and such Isle or Seat being repair'd by the Parishioners in

One may prescribe to sit in an Isle or Seat he repairs.

Otherwise if he does not repair it.

Common,

Common, the Parsons, Parishioners and Ordinaries Rights remain to them, and the Ordinary may from time to time appoint whom he pleases to sit there. *Cro. Jac. 366. Francis v. Ley. Hob. 9. Boothby v. Bailly.*

And where any Person has a Title to an Isle or Chappel, in, or adjoining to a Church, if the Ordinary places another in a Seat there with the Proprietor, the Proprietor may have his Action upon the Case against the Ordinary, and if he be prosecuted in the Spiritual Court for such Seat, Prohibition will lie, *Trin. 10. Jac. C. B. Garven v. Pin. Godbolt 200.* And if any private Person shall sit in such Seats, or keep out him that hath a Right, or does bury there, without his Consent, an Action on the Case lies for the Proprietor, altho' the Freehold be in the Incumbent. *Dawny v. Dee, & al. Cro. Jac. 604.*

Proprietor may have his Action against those who disturb him.

Altho' the Freehold of the Body of the Church be in the Incumbent, and the Seats fixt to the Freehold, the use of them is common to all the Parishioners that pay to the Repairs thereof, and any Seat so fixt to the Freehold be taken away by a Stranger, the Churchwarden and not the Person shall have their Action against the Wrongdoer, but the Authority of appointing what Persons shall sit in each Seat is in the Ordinary, who in Law is presum'd to be a Person that will give Regard to the Quality of the Parishioners, and give Precedence to those who ought to have *Godbolt 200. Hob. 69.*

Churchwardens shall have their Action for Seats taken away.

Ordinary generally has the power of disposing of the Seats.

But, tho' generally speaking, the disposal of Seats in the Body of the Church is in the Ordinary, as it is held in *Corvin's Case, 12 Cok. 5.* and according to *Godbolt's Reports 200.* where it is called *Garven* and *Pin's Case*, yet by Custom the Churchwardens may have the disposal of the Seats as in *London*, and which by the Custom may be in other Places, as was admitted in *Langley's* and *Cheute's Case, Hill. 30 & Car. 2. C. B. Raymond 246. Roll. 2. Abr. 288. 2d Rep. 24.*

But by Custom the Churchwardens may have the disposal of them as in *London.*

And

One may prescribe to sit in a Pew without shewing he Repairs it. *Qu.* In an Action on the Case. But to obtain a Prohibition to oust the Ordinary, he must shew he repairs it.

One may prescribe for the upper part of a Seat in the Church or Chancel.

Trespas will not lie by the Owner for a Seat pull'd down.

Action on the Case will lie for defacing Arms, or a Monument.

And it is said by *Coke* to be resolved in the *Star Chamber*, *Pas.* 10 *Jac.* between *Hussey* and *Katherine Laiton*, and others, that if a Man hath a House in a Parish, and that Time out of Mind he and all those whose Estate he hath, have used a certain Pew in the Church, and the Ordinary will displace him, he shall have a Prohibition: For if he hath it by Prescription, he hath as good Right to the Seat, as he hath to his House. *Com. ven's Case.* And it seems now to be so resolved and settled. *Trin.* 14 *Car.* 2. and *Pas.* 16 *Car.* 2. in *Buxton* and *Bateman's Case.* 1 *Sid.* 88, 201 *Raymond* 52. 1 *Keble* 345. 2 *Keble* 92. and a difference was taken between an Action on the Case for a disturbance, and a Prohibition, for in an Action on the Case the Plaintiff may entitle himself without alledging any Reparation, but to obtain a Prohibition, which is to oust the Ordinary of his Jurisdiction, there Reparation ought to be shew'd. *Pas.* 28 *Car.* 2. *B. R. Merchant v. Whelpain*, 3 *Keble* 754. *Trin.* 23 *Car.* 2. *C. B.* and *Brambury v. Birch*, Sir *Thomas Jones's Reports* 3 *Inst.* 202.

And it hath been held that a Man may not only claim a Seat by Prescription, but the upper part of a Seat, and in the Chancel as well as in the Body of the Church, and an Action on the Case lieth for it at the Common Law. *Noy* 120. 1 *Syderf.* 89. And it is agreed that the Plaintiff need not shew any Reparation in his Declaration yet by *Hales* chief Baron in *Stephen's Case* he ought to prove Reparation in Evidence. 1 *Sid.* 201.

If a Man with the assent of the Ordinary doth set up a Seat in *Navi Ecclesie*, and another pull it down, Trespas *Vi & armis* will not lie, because the Freehold is in the Parson, and so the only Remedy is in the Ecclesiastical Court. *W. Comp. Incum.* 300.

If any Coat of Arms be placed in the Windows, or there be a Gravestone or Monument in any Church or Church Yard erected, neither the Parson, Churchwardens or Ordinary, may break down or deface the same; and if they do

the Heir by descent interested in the Coat may have his Action on the Case against them, *Mich. 10 Jac. Pim's Case, 1 Roll. Abr. 625. Mich. 12 Jac. Day v. Bedingfield. Noy, 104. Hill. 12 Jac. B. R. Francis v. Leys Cro. Jac. 367.* And so may the Party that set them up, being Executor, altho' they are fix'd to the Freehold of the Parson. *Corven's Case. 12 Co. 105. 1 Inst. 18.* but none can bury or erect Monuments in the Church, unless in Isles or Chappels belonging to particular Parsons, without the Consent of the Parson. *Cro. Jac. 367.*

Monuments can't be erected without the Parson's consent.

But the Goods of the Church, as the Communion Plate, Books, Surplice, &c. do not belong to the Parson, but to the Parishioners; and if they are taken away or broken, the Church Wardens shall have their Action of Trespass. *Bellamy's Case. 1 Roll. Rep. 255. Bro. Corporations, 55, 73, 74.* therefore where a Parson sued in the Spiritual Court for the Organs taken out of the Church, a Prohibition was awarded. *Trin. 12 Jac. Bucksay's Case. 1 Roll. Rep. 77.* And if the Church Wardens for the time being, neglect to bring their Action for the Goods of the Church taken away, their Successors may bring Trespass for them. *Hill. 31 Eliz. C. B. 1 Leonard 177.*

Church Wardens may have their Action for the Goods of the Church taken away.

If the Goods of the Church be stolen, it is Sacrilege, and Robbery, and the Church Wardens may have an Appeal of Robbery. *Bro. Tit. Appeal 1, 45.* or a Libel may be exhibited in the Spiritual Court. *2 Keb. 23. 1 Siderf. 281.*

Or an Appeal of Robbery.

Yet the Church Wardens cannot dispose of the Goods of the Church, without the Consent of the Vestry; nor can the Parishioners have an Action of Account against the Church Wardens, for wasting them; but they must make new Church Wardens, and those Church Wardens may have an Action of Account against the former. *Bro. Gar- account 71. Bro. Corporations 85. Bro. Gar- ein 7.*

Church Wardens cannot dispose of the Goods of the Church, without the consent of the Vestry.

And the Church Wardens cannot prescribe to have Lands to them and their Successors, for they are not a Corporation to have Lands, but for

They cannot purchase Lands.

Except in
London.

Goods for the Church. 37 Eliz. between *Longley* and *Meredine*. And if a Feoffment be made to the use of the Church Wardens, this is a void Use. *Danv. Ab.* 787. But in *London* the Parson and Church Wardens are a Corporation, and may purchase and demise Lands, &c. *Cro. Jac.* 532.

A Gift by the Church Wardens, of the Goods of the Church in their Custody, without the Consent of the Vestry, is void. *Danv.* 787.

May retain
Materials for
Money laid
out in Re-
pairs.

The Church Wardens by the Assent of the Parishioners, may take the Stones belonging to the Church, and with part thereof repair a ruinous Window of the Church, and retain the rest to themselves, in Satisfaction of their Expences in such Repairs. *Danv.* 788.

May bring an
Action for
Bells taken
away.

Church Wardens may bring an Action of Trespass, for a Bell taken out of the Church in the time of their Predecessors, but it must be laid to be *ad damnum Parochianorum*, and not *ad damnum ipsorum*; but if they bring an Action for Goods taken in their own time, they may lay it to be *ad damnum ipsorum*, or *ad damnum Parochianorum* at their Election. *Mich.* 31 & 32 Eliz. between *Hadman* and *Ringwood*. *Cro. Eliz.* 145, 179.

Church Wardens to be chosen according to custom.

Church Wardens are to be chosen yearly in *Easter* Week, by the Joint Consent of the Parishioners and Minister, if it may be, in which case, the Minister has only a single Vote; but by Custom the Minister may chuse one, and the Parishioners another, or by Custom the Parishioners alone may chuse both, tho' it be directly contrary to a Canon. 1 *Ventr.* 267. A Counselor or Attorney cannot be chosen a Church Warden, and if they are, they may have a Prohibition. 2 *Roll. Abr.* 272.

One Church Warden can't release, if an Action be brought by both.

If two Church Wardens sue in the Spiritual Court, for a Levy towards the Reparation of their Church, and have Sentence to recover, and Costs assess'd, and after one of them releases, yet the other may proceed for the Costs, &c. for Church Wardens have nothing but to the use of the Parish, and

and the Corporation consists of both, and one of them cannot release or give away the Goods of the Church. *Trin. 7 Jac. Starkey and Barton. Cro. Jac. 234.*

If they waste the Goods of the Church, the new Church Wardens may call them to an Account before the Ordinary, or bring their Action at Common Law at their Election. Accountable to the succeeding Church Wardens.

The Church Wardens must keep the Body of the Church in Repair, and the Seats belonging to it, and repair the Fences of the Church Yard generally; but they may by prescription, charge the Repairs of the Fences of the Church Yard on a particular Person, by reason of his Estate. *2 Inst. 489.* Must keep the Pews and Fences of the Church Yard in repair.

If the Church Wardens erect or add any thing new, either as to the Fabrick of the Church, Utensils, or Church Yard, they must have the Consent of the Parishioners, and if such Additions are in the Church, the License of the Ordinary is necessary, as well as the Consent of the Parish, he being Judge of what is proper and decent there, and the Major part of the Parishioners will not conclude him in this Case: But where necessary Repairs are wanting, the greatest part of the Parish will bind the less, and if the Major part will not consent where Repairs are necessary, the Church Wardens may repair without their Consent, if upon Notice given them, they refuse to meet, or when they are met, refuse to make a Rate: But if a Church fall down, the Parishioners are not bound to rebuild it. *1 Vent. 367.* Can make nothing new, without consent of the Parish. And the Ordinary's consent, if it be in the Church.

The Rates for the Repair of the Church, shall be laid upon every Occupier of Lands in the Parish, altho' such Occupier live in another Parish, and he may come to the Vestries of the Parishioners, and vote in the making a Rate, but he shall not be charg'd towards the Ornaments of the Church, as for Bells, Repair of Seats, Bread and Wine for the Communion, Clerks Wages, Visitation Charges, &c. by reason of such Lands for the personal Estates of the Inhabitants, are Occupiers of Lands to contribute to Repairs. But not towards Ornaments, &c.

D 2 chargeable

chargeable with every thing that does not relate to the Fabrick of the Church, or Repairs of the Fences of the Church Yard, or such other thing as concern the Freehold. 5 Rep. 67.

Hamlets that have Chapels, to contribute.
Select Vestries.

Where there is a Hamlet which hath a Chapel of Ease, the Inhabitants must pay towards the Repairs of the Mother Church. *Hob. 66, 67.*

By Custom there may be select Vestries, or a certain Number of Persons elected, who shall have the Government of the Parish, to make Rates, and take the Accounts of the Church Wardens, &c.

Church Wardens to present Offences.

The Church Wardens are to present all Offences presentable by the Ecclesiastical Laws, relating either to the Church, the Parson, or the Parishioners, and they are bound to present Offences not only on their own Knowledge, but upon common Fame.

To give up their Accounts at the end of the Year.

Church Wardens at the end of the Year, or within one Month after, shall give an Account of their Receipts and Disbursements, to the Minister and Parishioners, and deliver what remains in their Hands to the Parishioners, or to the new Church Wardens. *Can. 89.* and if they refuse, they may be presented at the next Visitation, by the new Church Wardens, or any of the Parish that are interested, may by Process call them to an Account before the Ordinary, or the succeeding Church Wardens may have a Writ of Account at Common Law. 1 *Roll. Abr. 121.* And if they have disburs'd more than they have received, the succeeding Church Wardens shall pay what is due to them, and account it among the Disbursements at the end of the Year.

Or may be presented.

Or prosecuted at Common Law.

Spiritual Court may compel Parishioners to repair the Church. But cannot assess them towards it.

The Spiritual Court may compel the Parishioners to repair the Body of the Church, and may excommunicate every one of them till it be repair'd; but those that are willing to contribute shall be absolv'd till the greater part agree to a Tax, but the Spiritual Court cannot assess them towards it; and if a Rate be illegally impos'd, as by a Commission from the Bishop, &c. without the Parishioners Consent, yet if it be afterwards

wards assented to and confirmed by the Major part of the Parishioners, that will make it good. *Hill. 26 & 27 Car. 2. C. B. Rogers v. Davenant. 1 Mod. 154. 1 Ventr. 367.*

If a Church be down, and the Parish increas'd, Tax for re- so that of Necessity they must have a larger building a lar- Church, the Major part of a Parish may raise a ger Church. Tax for enlarging it, as well as repairing it. *Hill. 2u. 28 & 29 Car. 2. C. B. Hall and Booth. 1 Mod. 237. 2 Mod. 222.*

Churches United.

IN every City, or Town Corporate, which hath a 17 *Car. 2. c. 3.* Mayor and Aldermen, and particular Justices of the In Corporate Peace, by Charter or Commission, or Bailiff, or other Towns the Chief Officer, and other Assistants by the like Charter; Bishop with and where two or more Churches, or Chappels, or a the Mayor and Church and a Chappel, and the Parishes thereunto be Patron, may longing, do lie within the said Corporation, there the Bi- unite any two shop, by the Consent of the Mayor, Aldermen, and Ju- Churches stices of the Peace, or other Chief Officer or Officers, and there. of the Patron, shall or may unite the said Churches or Chappels, or Church and Chappel, and appoint at which the Inhabitants shall usually meet, and which of the said Churches or Chappels shall be united and annex'd to the other, which shall be the Church Presentative: And the Parishioners, Landholders, and Inhabitants of the said Parish so united, shall after such United Churches become void, pay all such Tythes and Dues, as did belong to the Incumbent of the united Church, unto the Incumbent of the Church or Chappel to which it shall be so united. *Stat. 17 Car. 2. cap. 3.*

But notwithstanding such Union, each of the Parishes But the Pari- so united, shall continue distinct, as to all Rates, Taxes, shes to make Parochial Rents, Charges, and Duties whatsoever, other separate Parish than what is before mention'd; and Church Wardens shall Rates. be elected for each Parish, as before such Union. *Ibid.*

And the said Union shall take effect upon the first To take effect Avoidance after such Union made, and the several Pa- on the first trons of the Churches so united, shall present by Turns Avoidance. to that Church only which shall be Presentative, in such Patrons to Order as the Bishop with the Consent of the said Mayor, present by Aldermen, Justices of Peace, or other Head Officer, or Turns, the

the Major part of them, shall determine, Respect being therein had to the Value of the Benefice. *Ibid.*

Saving to the King the Tenths and First Fruits of all such united Churches, and all Procurations and Pensions to all Persons to whom they now belong. *Ibid.*

Union to be
registred.

Provided that no Union shall commence until it be registred in the Register Book of the Bishop of the Diocese, *Ibid.*

United
Church must
be under 100*l.*
per Ann.

Provided also, That no Union shall be good, where the settled Maintenance belonging to the Incumbent of the United Church, shall exceed the Sum of 100*l.* *per An.* above all Reprizes, unless the Major part of the Parishioners under their Hands desire otherwise. *Ibid.*

Owners of
Tythes, en-
abled to settle
them on the
Church.

And every Owner or Proprietor of any Tythes, or Portion of Tythes, in any Parish or Chapelry, are hereby enabled to give or bestow, unite and annex the same, or any part thereof, unto the Parsonage or Vicarage where the same do lie, or settle the same in Trust for such Parsonage or Vicarage, or for the Curate where there is no Vicar endow'd without any License of Mortmain. *Ibid.*

If the Revenue
of a Church
be under 100*l.*
per An. the In-
cumbent may
take or pur-
chase Lands.
4 & 5 *W. & M.*
c. 12. United
Church to
contribute to
the Repairs of
the other,

And if the settled Maintenance of any Parsonage or Vicarage with Cure, shall not amount to 100*l.* *per An.* clear of all Reprizes; then it shall be lawful for the Incumbent to take and purchase to him and his Successors, Lands, Tenements, Rents, Tythes, or other Hereditaments, without any License of Mortmain. *Ibid.*

Where any Churches have been or shall be united, by the 17 *Car. 2. cap. 3.* and one of the said Churches is or shall be demolish'd, then as often as the Church Presentative shall be out of Repair, or there shall be need of decent Ornaments for Performance of Divine Service, the Parishioners shall pay towards the Repairs and Ornaments such Share and Proportion as the Bishop shall by the same Union appoint: And for want of such Appointment, then one third of the Charges of such Repairs and Ornaments. *Stat. 4 & 5 W. & M. cap. 12.*

READINGS.

Ordinary and
Patron might
unite Chur-
ches by the
Common
Law;

Before the Statute of 37 *H. 8. cap. 21.* and the Statute of 17 *Car. 2. cap. 3.* It was lawful for the Ordinary by the Assent of the Patrons, to unite or consolidate two Churches, and this without the King's License precedent, or Confirmation subsequent, if the Churches were poor: And by the Consent of the King, Patrons and Ordinary,

CHURCHES United.

39

A Union may be made, of any Churches of whatsoever Value. *Bro. Tit. Appropriation. Roll. Abr.* 778. 3 *Cro.* 500. But a Union made upon a pretended Poverty, where the Ordinary is deceiv'd, is void; and so if a Surmise be, that the two Churches are distant but one Mile, that there are but few Inhabitants, and that one of the Churches is in Decay, the Surmises being false, the Union is void: And it is agreed, that such Unions as might have been lawfully made before the Statute of the 37 *H.* 8. may be made at this Day, and that such Authority is not taken away or restrain'd, but limited what Union may be made without the King, for the Statute being in the Affirmative and not Negative, does not take away the Common Law.

King, Patron, and Ordinary, may unite any Churches. Union made on false Surmises, void.

But the Clause in the Statute of 17 *Car.* 2. c. 3. which provides that all Unions to be made in Corporate Towns without the Consent of the Magistrates, shall be clearly void, seems to extend to all Unions whatever, as well to those which shall be made with the King's Confirmation, as others.

Consent of Magistrates requisite in Corporate Towns.

And if the Churches, or Church and Chappel, be in two Diocesses, both Ordinaries must concur to make the Union, and so must both Patrons in all Unions. 11 *H.* 7. *Fol.* 8. in *Grendon's Case.* *Plowd.* 497. B. and if either of the Patrons be a Bishop, the Assent of his Dean and Chapter must be also had. *Pas.* 10 *Car.* B. R. Leigh and Hellier's Case. 2 *Roll. Abr.* 357.

Churches in 2 Diocesses, both Ordinaries must consent.

And a Church may be united to another, before it is void, as an Appropriation may be made by apt Words, when the Church is full, and he who hath the Church to which the other is united, may enter therein when it becomes void, without any other Donation or Induction, as was done where a Chappel was united to *Magdalen College* in *Oxford.* 11 *H.* 7. c. 8. See *Grendon v. the Bishop of Lincoln.* *Plowd.* 499.

Incumbent of the Church to which one is united, needs no Induction.

Upon an Union, it must be appointed who shall present next, whether one of the Patrons or both, or jointly or severally, by Turns and upon such

CLERGY *taken away.*

Validity of a
Union to be
try'd in the
Spiritual
Court.

Union made by Instruments, under the Hands and Seals of the Patrons, Ordinaries, and Incumbents, (if the Churches be then full) each of the Patrons, if he be disturb'd, may have his *Quare Impedit*. And after an Union made, if any Question arise, concerning the Validity thereof, this may not be try'd in the Temporal, but only in the Spiritual Court, unless such Union as is restrain'd by the Statutes aforesaid. *Trin. 37 Eliz. Austin v. Twine. 1 Cro. 500. Wals. Com. Incum. 129.*

Clergy taken away.

From Desert-
ers.

Clergy taken away from Soldiers departing out of the King's Service without License. 7 H. 7. c. 1. 3 H. 8. c. 5. 2 & 3 Ed. 6. cap. 2.

From petty
Treason,
Murder, Rob-
bery, Burners
of Houses, or
full Barns.

And from the
Accessories be-
fore.

Persons stand-
ing mute, &c.
or who do not
answer directly
to an Indictment
for the same
Offences, shall
also lose the
Benefit of their
Clergy.

From Felons
convicted in a
foreign Coun-
ty.

From Sodomy.

Parsons exclu-
ded Clergy as
well as Lay-
men.

From Persons guilty of petty Treason, Murder, robbing of Churches or Dwelling Houses, where any of the Family is within and put in Fear, or for robbing upon the Highway, and wilful burning of Dwelling Houses or Barns, where Grain or Corn shall be, and from their Abettors, Procurers, Helpers, Maintainers and Counselors of such Offences. 23 H. 8. c. 1. 1 Ed. 6. c. 1. 5 & 6 Ed. 6. c. 9. 4 & 5 P. & M. c. 4.

By the Stat. 23 H. 8. c. 1. those who shall stand mute or challenge peremptorily, above the Number of twenty, or who do not answer directly to an Indictment for the same Offences, shall also lose the Benefit of their Clergy. Stat. 25 H. 8. c. 3.

Persons convicted of Felony, for stealing Goods in a County where the Offence was not committed, or who shall stand mute, or challenge peremptorily above the Number of twenty, or who will not answer directly to such Indictment, shall be excluded the Benefit of their Clergy, in like manner as if they had been convicted in the same County where the Robbery or Burglary was committed, if they should have lost the Benefit of their Clergy there. Stat. 25 H. 8. c. 3. 5 & 6 Ed. 6. c. 10.

Persons guilty of Buggery, excluded the Benefit of their Clergy. Stat. 25 H. 8. c. 6. 5 Eliz. c. 17.

Parsons in Holy Orders, excluded the Benefit of their Clergy in all Cases where Laymen are excluded. 28 H. 8. c. 1.

Persons

Persons guilty of Horse Stealing, excluded the Benefit From Horse of their Clergy. *Stat. 1 Ed. 6. c. 12. Stat. 2 & 3 Ed. 6. Stealers.*

c. 33.

Persons convicted of robbing any Dwelling House or From Robbers Dwelling Place, any of the Family being within, or with- of Houses, any in the Precinct of the same, shall be excluded their Cler- person being gy, whether the Family be sleeping or waking. 5 & 6 within.

Ed. 6. c. 9.

And Persons convicted for robbing any Tent or Booth, Or of Tents in any Fair or Market, the Owner, his Wife, Children, or Booths. or Servants, being within the same, shall also be excluded their Clergy, whether the Owner, &c. be sleeping or waking. 5 & ~~6~~ *Ed. 6. cap. 9.*

Persons calling themselves *Egyptians*, who shall remain From Gypsies within this Realm for the Space of one Month, shall be excluded the Benefit of their Clergy; but not to extend to Children under thirteen Years of Age. *Stat. 1 & 2*

P. & M. c. 4.

All Persons who shall maliciously command, hire, or From Access- counsel any Persons to commit petty Treason, Murder, ries to Mur- Robbery, or to burn any Dwelling House, or any Barn, der, Robbery, having Corn or Grain therein, being convicted thereof, &c. from those or who shall stand mute, or challenge peremptorily above who stand twenty Persons, shall be excluded their Clergy. 4 & 5 mute, &c.

P. & M. c. 4.

Persons who shall forge, or assent to the forging or ma- From Forgers king any false Deed, Charter or Writing seal'd, Court of Deeds. Roll, or Will of any Person, to the Intent that the State of Freehold or Inheritance of any Person, or of his Right, Title, or Interest, may be defeated or charged, or shall produce the same in Evidence, knowing of the Forgery: Or if any Person shall forge or assent to be forged, any false Charter, Deed, or Writing, to the Intent that any Person shall have or claim, any Estate or Interest, for Term of Years, of, in, or to any Lands, Tenements, or Hereditaments, not being Copyhold, or any Annuity, in Fee, or for Term of Life or Years, or shall forge or assent to be forged, any Obligation, Bill, Obligatory or Acquittance, or a Release, or other Discharge of any Debt, Accompt, Action, Suit, Demand, or other thing personal, or shall produce the same in Evidence, knowing of the Forgery, shall for the second Offence be adjudg'd guilty of Felony, and be excluded the Benefit of his Clergy. *Stat. 5 Eliz. cap. 14.*

Any Person convicted of the felonious taking of any From those Money, Goods or Chattels, from the Person of another, who steal pri- vately without his Knowledge, or who will not answer vately from a directly to an Indictment for the same, or shall stand Man's person, mute,

Or stand
mute.

mute, or challenge peremptorily above the Number of twenty, shall be excluded the Benefit of his Clergy. *Stat. 8 Eliz. cap. 4.*

Persons al-
low'd Clergy
may be try'd
for other Of-
fences.

Every Person who shall be admitted to the Benefit of his Clergy, and shall before the same Admission, have committed any other Offence, whereupon Clergy is not allowable, shall and may be indicted for the same, in such Manner and Form, as tho' no such Admission of Clergy had been. *Stat. 8 Eliz. cap. 4. 18 Eliz. cap. 7.*

Rape and
Burglary ex-
cluded Clergy.

Persons convicted of any manner of felonious Rape, Ravishment, or Burglary, or who shall be outlaw'd for the same, shall be excluded the Benefit of their Clergy. *18 Eliz. cap. 7.*

Taken from
those who lie
with Girls un-
der ten.

Any Person who shall carnally know and abuse any Woman Child, under the Age of ten Years, shall lose the Benefit of his Clergy. *18 Eliz. cap. 7.*

From those
who harbour
Popish Priests.

Every Person who shall wittingly relieve, comfort, aid, or maintain, any Jesuit, Popish Priest, Deacon, Religious or Ecclesiastical Person, being out of Prison, shall be adjudg'd a Felon, without Benefit of Clergy. *Stat. 27 Eliz. cap. 2.*

Accessories
before to
Horse steal-
ing.

All Accessories before the Fact, to the stealing of Horses, are excluded the Benefit of their Clergy. *Stat. 31 Eliz. cap. 12.*

From Recu-
sants return-
ing after Ab-
juration.

Every Recusant of small Ability, who shall refuse to abjure the Realm, or who shall not after such Abjuration, depart out of this Realm, or after his Departure, shall return again without License, shall be adjudg'd a Felon, without Benefit of Clergy. *Stat. 35 Eliz. c. 2.*

From Persons
running away
with Heiresses.

Whoever shall carry away, against her Will, any Maid, Widow, or Wife, having Substance in Goods moveable, or having Lands or Tenements, or who is Heir apparent to her Ancestors for the Lucre of such Substance: Such Offender, his Procurers and Abettors, and also every Person convicted of wittingly receiving such Woman, so taken away against her Will, and every Offender indicted of any such Offence, who shall stand mute, or make no direct answer, or shall challenge peremptorily above the Number of twenty, he shall lose the Benefit of Clergy.

And their Ac-
cessories be-
fore.

This Act shall not extend to take away the Benefit of Clergy, but only from such Persons as shall be Procurers or Accessories before such Offence committed. *32 Eliz. cap. 9.*

From Persons
stealing the
Value of 5 s.
out of a House
in the day
time,

If any Person shall be convicted of the felonious taking away in the Day time, of any Money, Goods or Chattels, of the Value of five Shillings or upwards, in any Dwelling House, or any Outhouse belonging, and used to and with any Dwelling House, altho' no Person shall be

in the said House or Outhouse, such Offender shall be excluded the Benefit of his Clergy. 39 Eliz. cap. 15.

Every idle and wandring Soldier or Mariner, coming From Soldiers from his Captain from the Seas, or from beyond the and Seamen Seas, who shall not have a Testimonial under the Hand wandring of some Justice of Peace, of or near the place where he without a landed, setting down the Time and Place, when and Pass. where he landed, and the Place of his Dwelling or Birth, unto which he is to pass, and a convenient time therein limited for his Passage; or having such Testimonial, shall wilfully exceed the time therein limited, above fourteen Days: And every such idle and wandring Soldier or Mariner, and every other idle Person, wandring as Soldier or Mariner, who shall counterfeit such Testimonial, or shall have such Testimonial forg'd or counterfeited, knowing the same to be so, every such Person shall be adjudg'd guilty of Felony without Benefit of Clergy. Stat. 39 Eliz. cap. 17.

Every Person who shall stab, or thrust another Person, From stab- that hath not then any Weapon drawn, or that hath not bing. then first stricken the Party which shall so stab or thrust, so as the Person so stabb'd or thrust shall die thereof within six Months after, altho' it cannot be proved that the same was done of Malice forethought, yet the Offender shall be excluded the Benefit of his Clergy.

Provided that this Act shall not extend to any Person who shall kill another *se defendendo*, or by Misfortune, or to any Person who in keeping the Peace shall chance to commit Manslaughter, so as the said Manslaughter be not committed on purpose, under Pretext and Colour of keeping the Peace. Nor shall extend to any Person who in chastising his Child or Servant, who shall besides his Intent and Purpose, chance to commit Manslaughter. Stat. 1 Jac. 1. cap. 8.

If any Person shall use, practice, or exercise, any In-FromWitches vocation or Conjuraton of any Evil and Wicked Spirit, andConjurers, or shall consult, Covenant with, entertain, employ, feed, or reward any Evil and Wicked Spirit, or shall take up any dead Man, Woman, or Child, out of the Grave or other Place, or the Skin, Bone, or any other part of any dead Person, to be employ'd in any Witchcraft, Sorcery, Charm, or Inchantment, or shall use, practice or exercise, any Witchcraft, Inchantment, Charm, or Sorcery, whereby any Person shall be kill'd, destroy'd, wasted, consum'd, pin'd or lam'd, such Offender, his Aiders, Abettors, and Counsellors, shall suffer Death as a Felon, And their Accessories before. without Benefit of Clergy. 1 Jac. 1. c. 12.

And

CLERGY *taken away.*

And if any Person shall take upon him by Witchcraft, Inchantment, Charm, or Sorcery, to tell where any Treasure may be found or had, or where Goods or Things lost or stollen shall be found, or to the Intent to provoke any Person to unlawful Love, or whereby the Cattle or Goods of any Person shall be destroy'd or impair'd, or to hurt or destroy any Person in his Body, altho' the same be not done, such Person shall for the second Offence, lose the Benefit of his Clergy. 1 Jac. 1. c. 12.

From those Every Person who shall acknowledge or procure to be
who acknow- acknowledged. any Fine, Recovery, Deed inroll'd, Sta-
ledge Fines or tuté, or Recognizance, Bail, or Judgment, in the Name
personate Bail of any other Person not privy or consenting to the same,
in the Name he shall be adjudg'd a Felon, without Benefit of Clergy,
of others. 21 Jac. cap. 26.

Provided that this Act shall not extend to any Judgment acknowledged by an Attorney of Record, for any Person against whom such Judgment shall be had or given. *Ibid.*

From Mothers If any Woman be deliver'd of any Issue of her Body,
who conceal which being born alive, should by Law be a Bastard, and
the Death of shall endeavour privately, either by drowning or secret
their Bastards. burying thereof, or any other way, either by her self or
the procuring of others so to conceal the Death thereof,
as that it may not come to Light; whether it was born
alive or not, the said Mother so offending, shall suffer
Death as in case of Murder, except she can prove by one
Witness at least, that the Child was born dead. 21 Jac.
c. 27.

From those If any person shall be convicted of the felonious cut-
who steal ting and taking, stealing and carrying away, of any Cloth
Cloth from or other Woollen Manufactures, from the Rack or Ten-
the Tenters ter in the Night time, or if any person having the Charge
in the Night. or Custody of any Armour, Ordnance, Munition, Shot,
And those Powder, or Habiliments of War of the King's, or of any
who imbezel Victuals provided for the Victualling of any Soldiers,
his Majesty's Gunners, Mariners, or Pioneers, shall for any Lucre,
Stores to the or Gain, or willingly, advisedly, and of purpose to hin-
Value of 20 s. der his Majesty's Service, purloin or convey away the
same, to the Value of twenty Shillings, at any one or
several times; or if any Person shall feloniously steal or
imbezel any of his Majesty's Sails, Cordage, or any other
his Majesty's Naval Stores, to the Value of twenty Shil-
lings, and shall be convicted of any of the said Offences,
or shall not answer directly to the Indictment, or shall
stand mute, or challenge peremptorily above twenty, or
shall be outlaw'd upon such Indictment, he shall be exclu-
ded the Benefit of his Clergy. 22 Car. 2. cap. 5.

Provided

Provided that the Judges before whom such Offender But Judges shall be condemn'd, may grant a Reprieve for stay of may transport. Execution, and cause, such Offender to be transported to them. the Plantations for seven Years. *Stat. 22 Car. 2. cap. 5.*

If any Person shall on purpose and of Malice fore- From those thought, and by lying in wait, cut out or disable the who deface or Tongue, put out an Eye, slit the Nose, or cut off a Nose dismember a or Lip, or cut off or disable any Limb or Member, of Man. any of his Majesty's Subjects, with an Intent to maim or disfigure such Subject, every such Offender, his Coun- And their Ac- fellows, Aiders and Abettors, shall suffer as a Felon, with- cessories be- out Benefit of Clergy. *22 & 23 Car. 2. cap. 1.* fore.

Every Person who shall rob another, or shall feloniously From Robbers take away any Goods or Chattels being in any Dwelling of Dwelling House, the Owner or other Person being therein, and put Houses, &c. in fear, or shall rob any Dwelling House in the Day time, any Person being therein, or shall comfort, aid, abet, assist, counsel, hire or command, any Person to commit any of the said Offences, or to break any Dwelling House, Shop, or Warehouse, thereunto belonging or there- And their Ac- with used, in the Day time, and feloniously take away cessories be- any Money, Goods, or Chattels, to the Value of five fore, tho' none Shillings, altho' no Person shall be in such Dwelling be in such House, Shop, or Warehouse, or shall counsel, hire, or Houses, if they command any Person to commit Burglary, and be thereof took the Value convicted or attainted, or shall stand mute, not answer of 5 s. directly, or challenge above the Number of twenty, he shall not have the Benefit of his Clergy. *3 & 4 W. & M. c. 9.*

And if any Person be indicted for an Offence for which All Persons by vertue of any former Act he is excluded Clergy, upon standing mute Conviction, if he shall stand mute, or shall not answer or challenging directly, or shall challenge peremptorily above twenty of above twenty, the Jury, or shall be outlaw'd, he shall not be admitted excluded Cler- to the Benefit of his Clergy. *3 & 4 W. & M. c. 9.* gy.

And if any Person be indicted of Felony, for stealing Altho' try'd of any Goods or Chattels in any County, and be convi- in a County cted or attainted thereof, or shall stand mute, not answer where the Fact directly, or challenge peremptorily above twenty of the was not com- jury, he shall be excluded his Clergy, if it appear to the mitted. Court that the Goods were taken by Robbery or Burg- lary, or in any other manner in another County, where if such Person had been convicted, he should have been excluded Clergy, by this or any other Act. *3 & 4 W. & M. c. 9.*

If any Person forges or counterfeits the Common Seal From those of the Governour and Company of the Bank of *England*, who forge a or any Bill to be given out by the Bank, he shall be ad- Bank Bill or judg'd their Seal.

judg'd guilty of Felony without Benefit of Clergy. 7 & 8 W. 3. c. 31.

From Felony Every Person that shall by Night or Day, in any Shop, in Shop, Coach Warehouse, Coach-house or Stable, privately and feloniously steal any Goods, Wares, or Merchandizes, of the Value of five Shillings, altho' such Shop, &c. be not actually broke open by such Offender, and altho' the Owner of such Goods, or any other Person, be or be not in such Shop, &c. to be put in fear, or shall assist, hire, or command any Person to commit such Offence, being thereof convicted or attainted, or being indicted thereof, shall stand mute, or will not answer directly, or shall challenge peremptorily above twenty of the Jury, he shall be debarr'd the Benefit of his Clergy. 10 & 11 W. 3. cap. 23.

From Accessories to Piracy, before or after. Every Person who shall either on the Land or Seas, wittingly or knowingly, set forth any Pirate, or aid, assist, or maintain, procure, command, counsel or advise, any Person to commit Piracy or Robbery upon the Sea, and the same shall be committed, he shall be adjudg'd accessory to such Piracy. And every Person who shall receive, entertain or conceal, any such Pirate or Robber, or receive, or take into his Custody, any Ship, Vessel, Goods or Chattels, which have been piratically and feloniously taken, shall likewise be adjudg'd to be accessory to such Piracy and Robbery, and shall suffer such Pains of Death, Losses of Lands, Goods and Chattels, as the Principals ought to suffer. 11 & 12 W. 3. c. 7.

If any Captain, Master, Mariner, or other Officer, shall wilfully cast away, burn, or otherwise destroy the Ship unto which he belongeth, or procure the same to be done, to the Prejudice of the Owners or Merchants, he shall suffer Death as a Felon. 1 Anne, c. 9.

From those who assault a privy Counsellor. If any Person shall unlawfully attempt to kill, or shall unlawfully assault and strike, or wound any Person, being one of the Privy Council, when in the Execution of his Office of a Privy Counsellor in Council, or in any Committee of Council, he shall suffer Death as a Felon, without Benefit of Clergy. 9 Anne, c. 16.

From Forgers of South Sea Seal or Bonds. If any Person shall forge or counterfeit the Common Seal of the South Sea Company, or shall forge, counterfeit, or alter any Bond or Obligation, under the Common Seal of the said Company, or shall offer to dispose of, or pay away any such forg'd, counterfeited, or alter'd Bond, knowing the same to be such, or shall demand the Money pretended to be due thereon, or any part thereof, with an Intent to defraud the said Company, he shall

shall suffer as a Felon, without Benefit of Clergy. 9 A.

c. 21.

If any Person shall counterfeit or forge any Stamp or From Forgers Seal, to resemble those provided, or made in pursuance of of Stamps on the Act of 10 *Annæ*, cap. 19. for stamping Callicoes, Lin-Callicoes. mens, Printed Stuffs or Silks, or shall counterfeit the Impression of the same, upon any of the Commodities chargeable by that Act, to defraud the Crown of the Duty thereby granted, he shall be judg'd a Felon, without Benefit of Clergy. 10 A. c. 19.

If any Person shall counterfeit or forge any Stamp or Or Stamps on Mark, to resemble the Stamp provided in pursuance of Paper. this Act, for stamping Vellum, Parchment, and Paper, or shall counterfeit the Impression of the same, thereby to defraud the Crown, or shall utter or sell any Vellum, Parchment, or Paper, with such counterfeit Stamp thereupon, knowing it to be such, or if any Person shall privately and fraudulently use any Stamp or Mark, to defraud the Crown of the Duties, upon Vellum, Parchment, and Paper, every such Offender shall be adjudg'd a Felon, without Benefit of Clergy. *Ibid.*

Whoever shall forge or counterfeit any Lottery Order, Or Lottery or alter the Number or Principal Sum of such Order, or Orders. counterfeit the Hand of any Person to such Order, thereby to procure a fraudulent Assignment or selling of such Order, knowing of the Forgery, shall be adjudg'd a Felon, without Benefit of Clergy. 12 *Annæ*, c. 2.

Every Person that shall feloniously steal any Money, From Felony Goods or Chattels, Wares or Merchandizes, of the Value in a Dwelling of 40 s. being in any Dwelling House or Outhouse there- House not unto belonging, altho' such House or Outhouse be not broke to the actually broken by such Offender, altho' the Owner or Value of 40 s. any other Person be or be not in such House or Outhouse, or shall assist or aid any Person to commit such Offence, being convicted or attainted thereof, or being indicted, shall stand mute, not answer directly, or shall peremptorily challenge above twenty of the Jury, he shall be debarr'd the Benefit of his Clergy. Provided this shall not extend to Apprentices under fifteen Years of Age, who shall rob their Masters as aforesaid. 12 A. c. 7.

And if any Person shall enter a Dwelling House, by Felon break-Day or Night, without breaking the same, with an Intent ing a House to commit Felony, or being in such House shall commit to get out, Felony. and in the Night time break out, he shall be excluded Cler-adjudg'd guilty of Burglary, and shall be ousted the Benefit of his Clergy. *Ibid.*

If any Person shall make, or be assisting in the making From Persons any Hole in the Bottom or other part of any Ship or Vef-assisting in
fel

destroying a Ship.

1 Geo. cap. 5.
Clergy taken away from Rioters who continue together after Proclamation made.

Justice of Peace shall cause Proclamation to be made.

Form of the Proclamation.

Clergy taken away from Persons who demolish Churches, Meeting Houses, Dwelling Houses or Outhouses. And from Persons hindring Proclamation to be made.

fel in Distress, or shall steal any Pump belonging thereto, or shall be aiding or abetting in the stealing a Pump, or shall wilfully do any thing tending to the immediate Loss or Destruction of a Ship or Vessel in Distress, he shall be guilty of Felony, without Benefit of Clergy. 12 A. Sess. 2. cap. 18.

If any Persons to the Number of twelve or more, being unlawfully, riotously and tumultuously assembled together, to the Disturbance of the publick Peace, after the last Day of July 1715. being required by a Justice of Peace, Sheriff, or Under Sheriff of the County, Mayor or other Head Officer, or a Justice of Peace of any City or Town Corporate, where such Assembly shall be by Proclamation in the King's Name, in the Form hereafter directed, to disperse themselves, shall to the Number of twelve or more, unlawfully, riotously and tumultuously continue together by the Space of one Hour, they shall be adjudg'd guilty of Felony, without Benefit of Clergy. 1 Geo. c. 5.

And the Justice of Peace or other Person authoriz'd by this Act to make the said Proclamation, shall among the said Rioters, or as near to them as he can, safely come with a loud Voice, command, or cause to be commanded, Silence while the Proclamation is making, and then shall openly and with loud Voice, make or cause to be made, Proclamation in these Words, or like in Effect. *Ibid.*

Our Sovereign Lord the King, chargeth and commandeth all Persons being assembled, immediately to disperse themselves, and peaceably to depart to their Habitations, or to their lawful Business, upon the Pains contain'd in the Act made in the first Year of King George, for preventing Tumults and riotous Assemblies.

God save the King.

And if any Persons unlawfully, riotously and tumultuously assembled, to the Disturbance of the publick Peace, shall demolish or pull down, or begin to demolish or pull down, any Church or Chappel, or any Building for Religious Worship, certified and registred according to the 1 W. & M. c. 18. or any Dwelling House, Barn, Stable, or other Outhouse, every such Offence shall be adjudg'd Felony without Benefit of Clergy. *Ibid.*

And if any Person shall with Force and Arms, oppose, obstruct, or wilfully let or hurt any Person that shall begin to proclaim, or go to proclaim as aforesaid, whereby such Proclamation shall not be made, every such Offence shall

shall be adjudg'd Felony, without Benefit of Clergy. And all such Persons so riotously and tumultuously assembled, to the Number of twelve or more, to whom Proclamation should have been made if the same had not taken away been hindred, in case they continue together to the Number of twelve or more, one Hour after such Lett or Hindrance, having Knowledge of such Lett, shall be adjudg'd Felons, without Benefit of Clergy. *Ibid.*

Provided that no Person shall be prosecuted for any the Offences aforesaid, unless such Prosecution be commenced within one Year after the Offence. *Ibid.*

And all Sheriffs, and their Deputy Stewards, and their Deputy Bailiffs, of Regalities, and their Deputy Magistrates, of royal Burroughs, and all other inferior Judges and Magistrates: And also all high and petty Constables, or other peace Officers in Scotland, shall have the same Powers for putting this Act in Execution in Scotland, as the Justices of peace and other Magistrates aforesaid, respectively have in the other Parts of this Kingdom. And all Persons convicted of any the Offences aforesaid in Scotland, shall for every such Offence, incur and suffer the pain of Death, and Confiscation of Moveables. *Ibid.*

Provided that this Act shall extend to all Places for Religious Worship in Scotland, which are tolerated by Law, and where King George, the Prince and Princess, and their Issue, are pray'd for. *Ibid.*

Every Person listed in his Majesty's Service as a Soldier, or who shall list himself during the Continuance of this Act, as a Soldier, who shall excite, cause, or join in any Mutiny or Sedition in the Army, or desert his Majesty's Service, or being a Soldier actually listed, shall list himself in any other Regiment, Troop or Company, without a Discharge in Writing from his Colonel, or the Field Officer, commanding the Regiment in which he last serv'd, shall suffer Death, or such other Punishment as a Court Marshal shall inflict. Continued and enforced by 3 Geo. cap. 2. and the 4 Geo. Cap. 4. and further continued by 5 Geo. cap. 5. further continued by 6 Geo. cap. 3. further continued by 7 Geo. cap. 6. further continued by 8 Geo. cap. 3.

If any Person shall forge or counterfeit any Exchequer Bill, or any Indorsement or Writing thereupon. or tender in Payment any such forg'd or counterfeit Bill or any Exchequer Bill, with such counterfeit Indorsement or Writing thereupon, or shall demand to have such counterfeit Bill, with such counterfeit Indorsement or Writing thereupon, exchange'd for ready Money by the Bank of England, knowing the same to be forg'd or counterfeited,

feited, every such Offender shall be adjudg'd a Felon, without Benefit of Clergy. 3 *Geo. cap. 8.*

4 *Geo. c. 11.*
Clergy taken
away from
Persons retur-
ning from
Transportati-
on before their
time.

If any Offender order'd by any Court to be transported, shall return into *Great Britain* or *Ireland*, before the End of the Term limited by such Court, he shall be punish'd as a Person attainted of Felony, without Benefit of Clergy. Provided that his Majesty may at any time pardon and dispense with any such Transportation, and allow of the Return of any such Offender from *America*, upon paying their Owner or Proprietor such Sum of Money as shall be adjudg'd reasonable by any two Justices of Peace, residing in the Province where such Owner dwells. And where any such Offender shall serve out his Term according to the Order of the Court. such Service shall have the Effect of a Pardon, as to that Crime for which he was transported. 4 *Geo. c. 11.*

And from Per-
sons helping
others to sto-
len Goods.

And where any Person shall take any Money or Reward, directly or indirectly, for helping another to any stolen Goods or Chattels, he shall be adjudg'd guilty of Felony, and suffer Pains according to the Nature of the Felony committed, as if he had himself stolen such Goods and Chattels, in the Manner and with such Circumstance as the same was stolen, unless such Person do cause the Felon who stole the same, to be apprehended and brought to his Trial for the same, and give Evidence against him. *Ibid.*

Clergy taken
from others
returning
from Trans-
portation.

If any Person shall be in Prison for want of Bail, for exporting Wool, and do refuse to appear, or plead to a Declaration or Information for the said Offence by the Space of one Term, Judgment shall be entred against him by default: And where Judgment shall be obtain'd against such Offender, by Default, Verdict, or otherwise, and he shall not pay the Sum recover'd against him, within three Months after the entring up such Judgment, he may by Order of Court, be transported in the same manner as a Felon, for seven Years. And if he shall return to *Great Britain* or *Ireland*, before the End of that Term, he shall suffer as a Felon, without Benefit of Clergy. 4 *Geo. c. 11.*

Pirates exclu-
ded Clergy.

Every Person who shall commit an Offence for which he ought to be adjudg'd a Pirate, Felon or Robber, by 11 *W. 3. c. 7.* may be tried and adjudg'd for such Offence, in such manner as by an Act made in the 28 *H. 8. c. 15.* is directed and appointed for the Trial of Pirates, and shall be excluded the Benefit of Clergy for such Offences.

Provided that this Act shall not extend to such Persons as shall be convicted or attainted in *Scotland*. but shall extend to all his Majesty's Dominions in *America*. *Ibid.*

The

The counterfeiting or forging of any Stamp or Seal, 5 Geo. cap. 2. resembling those order'd to be made for stamping of Clergy taken Hides or Skins, Vellum or Parchment. or the counter- away from feiting or resembling of the Impression of any such Stamp Counterfeiters or Seal, on any Hide or Skin, or on any Vellum or Parch- of Stamps for ment, to defraud his Majesty of the Duties. or uttering Hides or Pa- or selling any Hide or Skin, Vellum or Parchment, with per. such counterfeit Mark or Impression knowing it to be so, is made Felony without Benefit of Clergy. 5 Geo. c. 2.

If any Person shall forge or counterfeit any Exchequer 5 Geo. c. 3. Bill, or any Indorsement or Writing thereupon or there- Clergy taken in, or tender in Payment any such forg'd or counterfeit from Persons Bill, or any Exchequer Bill, with such Counterfeit, In negotiating dorsement or Writing, or shall demand to have such counterfeit counterfeit Bill exchang'd for ready Money, by any Per- Exchequer son who shall be required to exchange the same pursuant Bills. to this Act, knowing of the Forgery, he shall be adjudg- ed a Felon, without Benefit of Clergy. 5 Geo. c. 3.

If any Person who shall become Bankrupt, or any other 5 Geo. c. 24. Person by his Order, Consent or Privy, shall after the Clergy taken 25th of April 1719. remove, carry away, conceal destroy, away from or imbezel any of the Goods, Wares, or Merchandizes Bankrupt con- whereof he, or any Person in Trust for him, was possess'd cealing the Va- or entituled to at the time of his becoming or continuing lue of 20 l. or a Bankrupt, to the Value of 20 l. or upwards, or any his Books, &c. Books of Accounts, Bonds, Bills, Notes, Papers or Wri- tings, relating thereto, with Intent to defraud his Cre- ditors, he shall be adjudg'd a Felon without Benefit of Clergy, or the Benefit of any Statute made in relation to Felons; and such Felons Goods and Estate shall be divi- ded among the Creditors, seeking Relief under the Com- mission of Bankrupt. 5 Geo. c. 24.

Forging or counterfeiting Exchequer Bills issued pursu- 6 Geo. c. 16. ant to the 6 Geo. cap. 4. is declar'd to be Felony without Clergy taken Benefit of Clergy; as also for forging Exchequer Bills away from made out pursuant to 6 Geo. cap. 10. Counterfeit-

If any Person shall forge, counterfeit, or alter any Re- ers of other ceipt, or Warrant, or any Indorsement or Writing there- Exchequer upon, made out by the Officers of the South Sea Compa- Bills. ny, upon Subscriptions to be taken for increasing their 6 Geo. c. 11. Capital Stock, or shall tender any such forg'd counter- Counterfeit- feit, or alter'd Receipt or Warrant knowing the same ers of South Sea to be forg'd, counterfeit, or alter'd to the said Com Receipts or pany or any of their Officers, or shall offer to alienate or Warrants ex- dispose of the same, every such Offender shall be adjudg'd eluded Clergy: a Felon, without Benefit of Clergy. 6 Geo. c. 11.

If any Felon who shall be order'd for Transportation 6 Geo. c. 23. shall be afterwards at large within any part of this King- Persons or- don, der'd for

Transportation, without some lawful Cause, before the End of the Term for which he was order'd to be transported, he shall remain in England, suffer Death as a Felon, without Benefit of Clergy. 6 Geo. 1. c. 23.

Clergy. If any Person shall forge or counterfeit any Lottery Ticket, or Certificate, made out pursuant to the 8 Geo. 1. c. 2. And Counterfeiters of Lottery Tickets, to be so, to the Managers of the Lottery, or their Cashier, with Intent to defraud his Majesty or any Adventurer, he shall be adjudg'd a Felon, without Benefit of Clergy. 8 Geo. c. 2.

8 Geo. c. 22. If any Person shall forge or counterfeit, or procure or assist, in the counterfeiting of any Letter of Attorney or other Instrument, to transfer, assign, sell, or convey any Share, or part of a Share, of and in the Capital Stock and Funds of any Body Politick or Corporate, establish'd by Parliament, or to receive any Annuity, in respect whereof the Proprietors have transferrable Shares in some Capital Stock, or shall forge or counterfeit, or assist in the forging or counterfeiting the Names of any of the Proprietors of any such Share in Stock, or of any Persons entitled to any Annuity or Dividend as aforesaid, to any such pretended Letter of Attorney, or shall fraudulently demand or endeavour to have any such Share in Stock transferr'd, or such Annuity or Dividend to be received, by virtue of any such forg'd Letter of Attorney, &c. or shall deceitfully personate any real Proprietor of the said Shares in Stock, Annuities and Dividends, and thereby transferring or endeavouring to transfer the Stock, or receiving or endeavouring to receive the Money of such real Proprietor, every such Offender shall be adjudg'd guilty of Felony, without Benefit of Clergy. 8 Geo. cap. 22.

And from those who personate Proprietors.

8 Geo. c. 24. If any Master of a Ship or other Person, shall trade with any Pirate, by Truck, Barter, or Exchange, or in any other Manner, or shall furnish any Pirate with Ammunition, Provision, or Stores, or shall fit out any Vessel, with a Design to Trade with, supply or correspond, with any Pirate, or if any Person shall consult, combine, confederate or correspond, with a Pirate, he shall be deem'd guilty of Piracy: And if any Person belonging to any Ship or Vessel, upon meeting any Merchant Ship or Vessel on the High Seas, or in any Port, Haven or Creek, shall forcibly board or enter such Ship or Vessel, and tho' they do not seize and carry off the same, shall throw over Board or destroy any part of the Goods, belonging to such Ship or Vessel, such Offender shall be deem'd a Pirate. And every Offender convicted of Piracy, Felony,

And Persons boarding a Merchant Ship and destroying the Goods.

And Persons boarding a Merchant Ship and destroying the Goods.

or Robbery, by virtue of this Act, shall be excluded the Benefit of his Clergy. 8 Geo. cap. 24.

Clergy.

ALL Clerks, as well secular as religious, who shall be convicted before secular Justices, for any Treasons or Clerks allow'd Felonies touching other Persons than the King himself shall the Benefit of have and enjoy the Privilege of Holy Church, and be Clergy by Statute without delay deliver'd to the Ordinaries demanding tute. them 25 Ed. 3. cap. 4.

Every Person not being within Orders, who hath once been admitted to the Benefit of his Clergy, and again arraigned for any such Offence, shall not be admitted to the Benefit of his Clergy a second time. 4 H. 7. c. 13. for a second

Provided if any Person demand his Clergy a second Offence, time because he is within Orders, if he fail to produce And Clerks his Orders, or a Certificate of his Orders at a Day given who can't prove him by the Court, he shall lose the Benefit of his Clergy. duce their Orders. Ibid.

Persons in Holy Orders shall be burnt in the Hand in like manner as Lay Clerks, and suffer and incur the same Pains, Dangers, and Forfeitures, as Lay-Persons admitted to their Clergy. Stat. 28 H. 8. cap. 1. 32 H. 8. burnt in the Hand. cap. 3.

Every Lord of Parliament shall have the Benefit of his Clergy for the first Felony, in all Cases where another Lord shall Subject shou'd have it, altho' he cannot read, and without being burnt in the Hand. 1 Ed. 6. c. 12. Clergy with-

Every Person who shall be admitted to the Benefit of his Clergy, for any Felony, and shall before such Admission have committed any other Offence, where Clergy in the Hand. is not allowable, he shall be indicted and try'd for such other Offence, in such manner as tho' no such Admission of Clergy had been. 8 Eliz. c. 4. Persons admitted to Clergy

* Every Person who shall be admitted to the Privilege of his Clergy, shall not thereupon be deliver'd to the Ordinary, but after burning in the Hand shall forthwith be enlarged and deliver'd out of Prison by the Justices. 18 E. c. 7. may be try'd for other Offences excluded Clergy. * 18 Eliz. c. 7.

|| Provided that the Justices before whom such Allowance of Clergy shall be had, may detain the Offender in Prison at their Discretion, so that the same do not exceed one Years Imprisonment. Ibid. Persons allow'd Clergy, to be discharg'd. || Unless the Judge think

fit to continue him in Prison for a Year,

One admitted to Clergy to Clergy shall answer to all other Felonies whereof he shall be tried for all be indicted or appeal'd. *Ibid.*

other Felonies, Every Woman convicted of Felony, for which a Man 21 *Jac. 1. c. 6.* might have his Clergy shall for the first Offence be branded in the Brawn of her Left Thumb with a hot Iron, burnt in the having a *Roman T* upon it in open Court. and shall be Hand and further punish'd by Imprisonment, not exceeding one Year, whipp'd for Whipping or sending to the House of Correction, as the Offences where Court shall think fit. 21 *Jac. 1. cap. 6.*

a Man shou'd If any Person indicted of an Offence for which he have had his wou'd be excluded Clergy, upon his Conviction shall Clergy. stand mute, or not answer directly, or shall challenge per-

3 *W. & M. c. 9.* remptorily above twenty of the Panel, or shall be out- Offenders lawed upon the Indictment. he shall not be admitted to standing mute the Benefit of his Clergy. 3 *W. & M. cap. 9.*

excluded Cler- If a Woman be convicted of any Felony for which a gy. Man should have had his Clergy she shall upon her Women to be Prayer have the Benefit of this Act, and Judgment of punish'd as Death shall not be given against her; but she shall suffer Men entitled the same Punishment as a Man should suffer *viz.* be burnt to Clergy. in the Hand in open Court and kept in Prison as long as the Justices shall think fit not exceeding one Year. *Ibid.*

Certificate of And where any Person hath once had the Benefit of Clergy being Clergy in some other County the Clerk of the Crown, allow'd in Clerk of the Peace, or Clerk of the Assizes of such Coun- another Coun- ty, shall certify a Transcript, briefly containing the Te- nure of the Indictment and Conviction and of his having the Benefit of the Clergy. or if a Woman, the Benefit of this Statute; which Certificate, shall be a sufficient Proof of the same. *Ibid.*

4 & 5 *W. & M. c. 24.* Woman which a Man might have Clergy, and hath once had the to have the Benefit of the Statute of 3 & 4 *W. & M. cap. 9.* and shall Benefit of the be again convicted of any Felony for which a Man might Statutes which have Clergy she shall be excluded from having any Be- allow Clergy nefit of the said Statute, 4 & 5 *W. & M. cap. 24.*

but once, Where any Person shall be convicted of any Theft or 3 *A. c. 6.* Larceny, and shall have the Benefit of this Act or ought Offenders en- by the Laws in Force before the making this Act. to be titled to Cler- burnt in the Hand, he shall be burnt in the Hand as for- gy, to be burnt merly; and the Court where such Offender shall be con- in the Hand victed, shall at their Discretion give Judgment that such and after- Offender be committed to the House of Correction or wards sent to Publick Workhouse, for such time as such Court shall the House of award, not less than six Months, and not exceeding two Correction, Years, from the time of such Conviction, and the Offen- der there to be kept to hard Labour, And in case he re- fuse

CLERGY.

55

use to work and labour as he ought, the Keeper of such Workhouse is required to give him due Correction. *Stat.*

5 A. c. 6.

And if any Person be convicted of such Felony, for But shall not which he ought to have had the Benefit of Clergy and be required to pray to have the Benefit of this Act, he shall not be re-read. quired to read, but shall be allow'd and taken to be and punish'd as a Clerk Convict, which shall be as advantageous to him, as if he had read as a Clerk. *Ibid.*

If a Person shall be convicted of grand or petty Larceny, Persons entitled by the Law wou'd be entituled to Clergy. (except Persons receiving or buying stolen Goods) the Court before whom he shall be convicted, or any other Court held in the same place with the like Authority, instead of ordering such Offender to be burnt in the Hand or whipt, may order him to be sent to the Plantations for seven Years, and may transfer and make over such Offender by Order of Court, to the Use of any Person who shall contract for the Performance of such Transportation. *Stat.*

4 Geo. c. 11.

READINGS.

The Lord Chief Justice *Kelynge* gives us the following Account of the Rise and Progress of this Custom, of allowing Offenders the Benefit of their Clergy.

This Privilege of Clergy, says his Lordship, began from an Encroachment of the Pope upon the Temporal Power, in Behalf of the Clergy, whom he endeavour'd to exempt from the Jurisdiction of Lay Judges; but notwithstanding the whole Body of the Clergy of this Kingdom insisted upon it, as appears by the Statute of *Art. Cler. cap. 15. 9 Ed. 2.* that *Clericus coram Seculari Judice Judicari non debet*, in case of Life or Member, yet the Temporal Courts did not wholly yield to their Imposition, but only in part, and qualify'd it in a great Measure.

And first they would indict Clerks for Felonies and Crimes, as well as others, and proceed thereon, until the Ordinary did demand them; and if the Ordinary would not demand them, anciently the King's Courts took no Notice of them, but would proceed to Conviction, Attainder and

The Pope's endeavour to exempt the Clergy from Temporal Jurisdiction. gave the Rise to this Custom.

Oppos'd and qualify'd by the Temporal Courts.

Clergy extended to those who were not in Orders.

Execution; and if the Ordinary did claim Clerks before Conviction, then an Inquisition was taken whether the party was guilty or not, *ut sciatur qualis Ordinatio deliberatur*, and if acquitted, discharged, but if found guilty, then deliver'd to the Ordinary, who was to proceed to Purgation. This Privilege so restrain'd and order'd, was confirm'd and establish'd by the Statute of *W. 1. c. 2.* and thereby became an undoubted Rite to all Clerks, which was confirm'd and allow'd by divers Acts of Parliament since: But then the Ordinary was to proceed to deprive the Clerk of his Character, if he could not purge, whereby he became a meer Layman: For tho' at first the Clergy never intended that any should have that Privilege, but those who were in Holy Orders, yet afterwards they extended it to those who were not strictly in Orders, but were Assistants to them in doing Divine Offices. See *Linwood* 92. That they should have the Privilege of Clergy, who had but *primam tonsuram*, which for the Purpose was the Clerk that sung or set the Psalm, who was comprehended under the Word *Clericus*. *Linwood* 17. So was the Door-keeper of the Church or Chappel, the Reader, Exorcist, Sub-Deacon, which because the Temporal Courts did not readily allow, occasion'd the Complaint of the Clergy, as appears by the Statute of *25 E. 3. cap. 4.* that Clerks, Seculars, &c. had been drawn and hang'd by the Award of Secular Judges, in Prejudice of the Franchises, and in Opposition to the Jurisdiction of Holy Church. Therefore it was granted by the King, that all manner of Clerks, as well Secular as Religious, which should be convict before Secular Justices, should have that Privilege, which Word, Clerk in that Statute hath Reference to the Canon Law, and being made to establish a Privilege claim'd thereby, was expounded by it, which included all that were of those inferior Orders: And from thence it is to be observed, Occasion was taken in after Times to alter the Method of allowing Clergy; for at the Common Law, if the Party had not demanded

manded his Clergy before Conviction, he lost it. *Prisot*, Chief Justice of the *Common Pleas*, in the time of *H. 6.* made an Alteration, and would direct the Party indicted or appealed, to answer to the Felony, and after Conviction, upon his Demand, allow him his Clergy; which Course, has been ever since observ'd, being grounded upon the said Statute of 25 *Ed. 3. cap. 4.* that allows it to Clerks after Conviction. *Ibid.* 100.

Now the next Enquiry will be, how meer Laymen who had no Relation to any Ecclesiastical Employment, came to enjoy this Privilege. It is to be known, that in those Days few were bred to Literature, but those who were actually in Orders, or educated for that Purpose; and therefore the Way of Trial whether one was a Clerk or no, was by reading, of which the Court was Judge, and not the Ordinary; for if he could not read, the Court would not deliver him as a Clerk, tho' the Ordinary did claim him, and if he did read, he should be allow'd as a Clerk, tho' the Ordinary refused him. And Reading being the Way of Trial whether a Man were a Clerk or not, without further Examination into any other Qualification, all Persons that so approved themselves by reading, were allow'd to be Clerks, which is an equitable Construction of those Statutes that establish'd and extended that Privilege, because they were tried and found by their reading to be Clerks. *Ibid.* 101.

Court Judge
of reading and
not the Ordinary.

And further, The allowing Clergy to Laymen that could read, seem'd very much in Favour of the Clergy, in preserving its Succession, by exempting such who were capable of receiving any Orders, when there was Occasion for their Service; for tho' Men were never so well qualify'd for being Clergymen, yet by the Canon Law, which is still in Force, they were not to receive any Orders until a Place was provided for them, which favourable Construction of the Statutes, in not confining the Benefit of Clergy to those who were actually in Orders, but who were capable of them, received constant Approbation and

and Allowance. See 4 H. 7. cap. 13. That enacts, That every Person not being within Holy Orders, that once had the Benefit of his Clergy, should not be admitted to it at any other time; and the like Act was made 4 H. 8. which for Murders, Robberies, &c. excludes all Persons from the Benefit of Clergy (Clerks in Holy Orders excepted) which gave much Offence to the Clergy, because the Construction of the Words Holy Orders, was confin'd to the greatest Orders, as Deacon and Presbyter, excluding not only Laymen, but all the inferior Orders, whose Orders are not accounted Sacred. See *Linwood* 92. for they had only *primum tonsuram*, which caus'd the Abbot of *Winchcomb* in his Sermon at *Pauls Cross*, to inveigh against that Act, and to avoid the Force of it against those of the inferior Orders; the Clergy insisted, that *tam minores quam majores Ordines fuere sacri*. See *Keil* 180. the whole Debate of that Matter. *Ibid.* 102.

That Laymen that could read ever had the Privilege of Clergy, since the 25 E. 3. doth appear without Contradiction by our Books, which Allowance never was condemn'd in Parliament, or complain'd of as a Grievance, but rather approv'd of: And the Statute of the 18 *Eliz.* being made, extends to all Persons that at that time were admitted to the Benefit of Clergy, and used to be deliver'd to the Ordinary, whereby every Person as well Lay as Spiritual, hath a Right to the Benefit of that Statute for the first Offence, in the same Degree as Clergymen in the greatest Orders had before. *Ibid.*

If one be indicted of Murder, and thereupon convicted of Manslaughter, and the Court will not call him to Judgment, but continue him over to another Goal Delivery, upon a *curia advisare vult de judicio*, &c. if an Appeal of Murder be brought, he may plead his Conviction, and his being a Clerk, and ready to read, if the Court would have allow'd him. *Kelynge* 107.

The Court
bound to al-

When the Indictment and Conviction of Manslaughter and Appeal, are removed into the King's Bench,

Bench, that Court is bound *ex officio* to call the low Clergy, Party to Judgment, and if he pray his Clergy, if demanded, to allow it to him, and order him to be burnt in the Hand. *Ibid.*

When at the same Sessions or Assizes, there is an Indictment and an Appeal depending, it is most just to proceed upon the Appeal, if the Prosecutor desires it, and the Court in Justice is obliged thereunto, because the *Stat. 3 H. 7.* doth not forbid it: For the Words are, That there shall be no tarrying for the Appeal, but if the Appeal be ready, it ought to have the Preference; yet if the Court should proceed to try the Prisoner upon the Indictment, before he be tried upon the Appeal, and he be convicted of Manslaughter, and hath his Clergy, it will be a good Bar to the Appeal: For there may be a just Cause for the Court to prefer the Indictment to the Appeal, as if the Court should find that there is like to be a faint or coveonous Prosecution of the Appeal in order to acquit the Party, for the Interest of the Crown and the Sake of Publick Justice, the Court ought to try the Prisoner upon the Indictment, rather than upon the Appeal; for otherwise the Acquittal upon a faint Prosecution will conclude the King.

If upon an Indictment of Murder, the Party is convicted of Manslaughter, and immediately after at the same Goal Delivery, the Wife or Heir of the Deceas'd shall put in Appeal, it is most just for the Court to call the Convict to Judgment upon the Indictment, and to allow him his Clergy before he be put to answer to the Appeal, and then he may plead the Conviction and Clergy in Bar of the Appeal; for tho' it be the same Sessions, and the Appeal hath Relation to the first Day of the Sessions as well as the Indictment, yet there being a Record of a Proceeding upon the Indictment, it is pleadable in Bar, and may be averr'd to be the same Day before the Appeal commenced; or if the Appeal be commenced before the Trial, if it appears to the Court the Conviction was before Plea pleaded to the Appeal, it is sufficient:

Conviction of Manslaughter and Clergy, a good Bar to an Appeal of Murder.

cient: For suppose a Man is indicted of Murder, and tried and convicted of Manslaughter, or acquitted, and at the same Sessions or Assizes there is a Coroners Inquest, he may plead his former Acquittal or Conviction, in Bar of the other; tho' the Course now used to prevent that Trouble, is to charge the Jury with both Inquisitions at the same time, yet anciently it was otherwise, and if the Court will not allow the Convict of Manslaughter his Clergy, he may insist upon it before he answers to the Appeal. *Kelynge* 108.

Clergy to be allow'd, where not expressly taken away.

Where a Statute makes an Offence Felony, Clergy shall be allow'd, tho' the Statute expressly says, That the Offender *shall suffer Pains of Death*. *Kelynge* 104. Nor shall any general Words in a Statute, take away the Benefit of Clergy from the Offender. *Ibid.*

Clergy deny'd to Hereticks, Infidels, and sacrilegious, by the Common Law.

The Common Law did not deny the Benefit of Clergy but in certain Cases, as if a Man was convicted of Heresy, he should not have had his Clergy for any Felony; and the same Law was where a Person was a *Turk, Jew, or other Infidel*, and the Law was the same in case of High Treason, before the Statute of the 25 *E. 3. cap. 4.* but one excommunicated or outlaw'd for any Felony for which he might have Clergy, should have been admitted to his Clergy, in case of Sacrilege, a Man should have been ousted of his Clergy. *11 Co. 29. b.*

And where Clergy is taken away by Statute, the Offence must be laid in the Indictment, to be against that very Statute, or the Offender will have his Clergy.

Where Clergy is taken away from the Principal by Statute, it is not thereby taken away from the Accessory, unless the Accessory be particularly mention'd. *H. P. C. 231.*

Clergy amounts to a Pardon.

Clergy or Burning in the Hand so restores a Man to his Credit, that he shall be admitted a Witness in any Court of Law, for this comes in the place of Purgation. *Kel. 37.* and he may also purchase Goods, and retain the Profit of his Lands for the future, altho' those he had at the time of his

his Conviction were forfeited. *Co. 5 Rep. 110*
Foxley's Case.

And where Clergy is allowable, it shall be allow'd, as well where the Party is convict by Confession as by Verdict, and where he stands mute.
H. P. C. 231.

None shall have the Benefit of Clergy twice, ^{One in Orders} unless he be really in Holy Orders, and Ecclesiastical Persons having their Clergy, shall not be burnt in their Hand, any more than Peers of the ^{not to be burnt in the Hand.} Realm. *Hob. 288, 294.* And the King may pardon the burning of the Hand; for the burning even in an Appeal, is no part of the Judgment, nor so much as in the Nature of Punishment, but rather a Mark to notify that the Person may have his Clergy but once. *Hob. 294. Co. 5 Rep. 50.*

A Man burnt in the Hand, shall be immediately discharg'd of his Imprisonment. *5 Co. 50. Biggin's Case*; yet the Justices if they see Cause, may detain the Party in Prison, not exceeding one Year, by the 18 *Eliz. c. 7.* And every Person, notwithstanding his being admitted to Clergy, shall answer to all other Felonies, whereof he shall be afterwards indicted. *Ibid.*

Coaches.

HER Majesty is empower'd by this Act, to appoint *2 A. c. 23.* any Persons not exceeding five at any one time. to Commission- be Commissioners for licensing all Hackney Coaches, which ers appointed after the 24th of *June 1715.* during the Term of thirty for licensing two Years next ensuing, shall be driven for Hire in *Lon- Hackney* *don and Westminster,* or in the Weekly Bills of Mortality. Coaches with- in the Bills of *9 Annæ. cap. 23.*

And they are authoriz'd and required, under the Hands Mortality. and Seals of the Major part of them, from time to time 800 to be to license all such Persons as after the said 24th of *June* licens'd. 1715. during the said Term, shall drive or keep any Hackney Coach or Coach Horses within the Limits afore- said, so that the Number at any one time do not exceed eight Hundred; and upon every License there shall be re- Which are to serv'd and made payable to her Majesty, the Weekly Sums pay to the of five Shillings, to be paid Monthly during the Conti- Crown 5 s. nuance a Week.

nuance thereof, with such Covenants to be inserted, at the said Commissioners shall think fit. *Ibid.*

200 Chairs to be licens'd. And the said Commissioners are likewise impowred to License all such Hackney Chairs, which after the 24th of June 1711. during the Term of thirty two Years from thence next ensuing, shall be kept and us'd for Hire, in the said Cities of London and Westminster, and Limits aforesaid; the Number of such Chairs not to exceed two Hundred at any one time; and upon every of the said Licenses, there shall be reserv'd and payable to her Majesty,

To pay 10 s. the annual Sum of ten Shillings, to be paid quarterly at per Ann. to the the four most usual Feasts, with such Covenants as the Crown. said Commissioners shall think fit. *Ibid.*

Unlicens'd And no Person shall drive, or let to Hire, by the Hour, Coach to for- Day, or otherwise, any Hackney Coach or Coach Hor-
seit 5 l. ses within the Limits aforesaid, without such License from the said Commissioners, on pain of five Pounds for every Offence. And no Person shall carry for Hire in any

Unlicens'd Hackney Chair, any Person whatsoever, within the Li-
Chair 40 s. mits aforesaid, without such License, on pain of forty
Coach Horses Shillings. And no Horse, Gelding, or Mare, used with
to be 14 any Hackney Coach, shall be under fourteen Hands high,
Hands high. *Ibid.*

Coaches and And every Coach and Chair shall have a Figure or Mark
Chairs to have of Distinction, which shall be plac'd on each Side of every
Figures upon such Coach and Chair; and if any Person be licens'd to
them. keep more than one, every one of them shall have several
Figures or Marks of Distinction: And no Person shall
put the same Figure or Mark upon his Coach or Chair,

Not to be al- that is appointed for another, or alter or deface the Fi-
ter'd or coun- gure or Mark appointed for his Coach or Chair, on pain
terfeited on of 5 l. one Moiety to the Informer, and the other to the
pain of 5 l. Crown. *Ibid.*

9 A. C. 23. And all such as have been ancient Coachmen or Chair-
Ancient men, shall be first licens'd, unless they neglect or refuse to
Coachmen to take them in a reasonable time. *Ibid.*

be prefer'd. And if any Commissioner shall grant Licenses for more
Commission- than eight Hundred Coaches, or two Hundred Chairs,
ers licensing to be in Being at the same time, he shall forfeit 100 l. for
above the said every such Offence, to be recover'd in the Courts at West-
Numbers for- minster. *Ibid.*

feits 100 l. And no Coachman shall take for his Hire in London and
Hire of a Westminster, or within ten Miles thereof, above ten Shil-
Coach 10 s. a lings a Day, reckoning twelve Hours to the Day, and by
Day, 18 d. the the Hour, not above eighteen Pence for the first Hour,
first Hour, and and twelve Pence for every Hour after: And none shall
12 d. after: pay from the Inns of Court or thereabouts, to any part
of St. James's or Westminster, (except beyond Tuttle Street)

above

above twelve Pence, and the same Prizes back again; and Other Rates from the Inns of Court to the *Royal Exchange* twelve Pence, to the *Tower*, *Bishopsgate Street*, *Aldgate*, or thereabouts, eighteen Pence: And the like Rates from and to any Places at the like Distances. *Ibid.*

Provided that none shall be oblig'd to pay above twelve 12 d. for a Pence for a Coach, for any Distance not here set down, Mile and so as the same do not exceed one Mile and four Furlongs, Furlongs. or above eighteen Pence for any Distance not here set 18 d. for 2 down, not exceeding two Miles. *Ibid.* Miles.

And the said Commissioners shall cause to be measur'd Distances to and fix'd up at the *Royal Exchange*. the Distances between be measur'd. the most noted Places within the Limits aforesaid, (not set down in this Act) according to which the said Rates shall be paid. *Ibid.*

And no Person shall pay for a Hackney Chair, more Chair to go than the Rate allow'd for a Hackney Coach driven two two Thirds of third Parts of the same Distance: And if any Coachman the way a or Chairman shall refuse to go at, or shall exact more Coach goes. for his Hire than the Rates aforesaid, he shall forfeit for- None to take. ty Shillings. *Ibid.* above these

And the said Commissioners and their Officers, are re Rates, on pain quired not to take or demand, directly or indirectly, of of 40 s. any Person for their Licenses, any Money, Gratuity, or Licenses to be Consideration, or any Fee or Reward for any thing by-granted *Gratis* them to be done in Execution of their said Offices, on on pain of pain of forfeiting the same, and being incapable of any Forfeiture of Grant thereof, except that their Clerks for writing and Office. ingrossing each License, may take two Shillings and six 2 s. 6 d. for Pence and no more. *Ibid.* Writing.

And all the Money arising by this Act. shall be paid in- Money to be to the Receipt of the *Exchequer*, and the said Commis- paid into the: oners shall upon Oath, deliver Books of Accompts, con- *Exchequer* taining all the Licenses granted, and the Names of the Licenses to be respective Persons to whom granted, and the Rents and registred. Profits thereby accrued into the Treasury. *Ibid.*

And all the said Rents and Sums of Monies, reserv'd 9 A. c. 23: or payable for the said Licenses, and all Forfeitures pay- Pains to be lev- able by virtue of this Act, or of any Orders or By Laws vied by Di- to be made by the said Commissioners (the Pains incur- stress and Sale, red by the said Commissioners excepted) shall be levied by by Warrant Distress. by Warrant from any three or more of the Com- from the Com- missioners, which Distress, shall be sold within ten Days missioners. if upon seven Days Notice the Offender do not pay the pain incurr'd without such Warrant; and in default of Distress the Offender neglecting to pay the Penalty shall In default of, by like Warrant be committed to Prison till he hath paid Distress Offen- the Penalty. And in case any Weekly or other Rent or der to be im- Payment, prison'd.

If Rent be behind, License may be re-vok'd. Payment, for any Coach or Chair, shall be behind fourteen Days, the said Commissioners without any Demand thereof, may revoke such License, and instead thereof, license any other Coachman or Chairman. *Ibid.*

Offences to be determined in a summary way. All Offences against this Act, (other than the Offences of the Commissioners) shall be determined in a Summary way, by the said Commissioners, or any three of them, upon the Oath of one or more Witnesses, (the Party accused being summon'd to make his Defence) and one Moiety of the Forfeitures shall go to the Crown, and the other to the Informer. *Ibid.*

A Moiety of the Forfeitures to the Crown, and the other to the Informer. *Ibid.*

Persons prosecuted for what they shall do in pursuance of this Act, may plead the general Issue, &c. And if a Verdict pass for them, or the Plaintiff discontinue, &c. they shall have double Costs. *Ibid.*

Provided that no Writ of *Certiorari* shall supercede Execution or other Proceeding upon any Order made by the said Commissioners. *Ibid.*

And it shall be lawful for the said Commissioners or the Major part of them, to make Orders and By-Laws to bind such Persons only as shall have Licenses, and to annex such Pains and Forfeitures for the Breach thereof, as they shall think fit, so as the same be agreeable to the Intent of this Act, and for the good Government of the Persons licens'd, and do not contain any thing contrary to Law. *Ibid.*

Provided that such By-Laws be allow'd by the Lord Chancellor, the Chief Justices, and the Lord Chief Baron for the time being, or any three of them, and the Orders contained in this Act, and the Pains thereupon; and the said By-Laws and Penalties thereupon, may be put in Execution, levied and inflicted, by any Justice of Peace, Mayor, or Head Officer, of the County, City, or Place, where such Offence shall be committed: any Justice of Peace. *Ibid.*

And all Penalties levied by any Justice of Peace, &c. in pursuance of this Act, or the Queen's part of the same, shall be transmitted to the Receiver General of the Revenue arising by Hackney Coaches and Chairs, and a Certificate thereof to the said Commissioners within ten Days after the levying such Penalties, on pain of forfeiting double the Sum which should be so transmitted and certified, viz. Two Thirds to the Crown, and the other to the Informer: And upon Complaint of any Person, of the Misbehaviour of any Coachman or Chairman, the said Commissioners may summon him to answer such Complaint; and upon his being heard, or making default of Appearance, they may, if they see Cause, revoke the License to be revok'd.

And a Certificate to the Commissioners.

9 A. c. 23. Abuse of Coachman, &c. his License to be revok'd.

And all Penalties levied by any Justice of Peace, &c. in pursuance of this Act, or the Queen's part of the same, shall be transmitted to the Receiver General of the Revenue arising by Hackney Coaches and Chairs, and a Certificate thereof to the said Commissioners within ten Days after the levying such Penalties, on pain of forfeiting double the Sum which should be so transmitted and certified, viz. Two Thirds to the Crown, and the other to the Informer: And upon Complaint of any Person, of the Misbehaviour of any Coachman or Chairman, the said Commissioners may summon him to answer such Complaint; and upon his being heard, or making default of Appearance, they may, if they see Cause, revoke the License to be revok'd.

penalty of such Coachman or Chairman, for his Behaviour in giving abusive Language or otherwise, and license another in his Stead. *Ibid.*

And it shall be lawful for any licens'd Hackney Coach-Coaches and man or Chairman, to ply and to drive, and carry on the Chairs may Lord's Day, within the Weekly Bills of Mortality, not drive on Sunday withstanding the Act of 29 Car. 2. For the Observation of the days. Lord's Day. *Ibid.*

And an Account of the Profits and Duties arising by Accounts to this Act, shall every Year be made up before the Auditors of the Imprest. *Ibid.* the Profits.

And if any Person shall refuse to pay any Coachman or Justice of Chairman his Fare, or shall cut, deface, or break his Peace may receive a Coach or Chair, it shall be lawful for any Justice of Peace lieve a Coach of the Place, to grant a Warrant to bring the Offender man abus'd, before him, and upon Proof made thereof upon Oath, to &c. award reasonable Satisfaction to the Party grieved; and upon Refusal to pay the same, to bind over the Party to the next Quarter Sessions, where the Justices may finally determine the Complaint, and award Satisfaction, and for Non-payment, levy the same by Distress. *Ibid.*

And if any Person who shall drive a Coach, or carry a Servant of a Chair for Hire, who shall act under the License of another Person licens'd ther, as his Servant or otherwise, shall be guilty of any to forfeit 20 s. Misbehaviour in his Employment, by demanding more if abusive: than his Fare, or by giving abusive Language, or any other rude Behaviour, such Offender being convicted by the Oath of one Witness, either before a Major part of the Commissioners, or before any one Justice of Peace of London, Westminster, Middlesex, or Surrey, he shall forfeit a Sum not exceeding twenty Shillings, to the Poor of the Parish where such Offence shall be committed: And in default of Payment thereof, he shall be committed to Bridewell, or some other House of Correction, for seven Days, there to be kept to hard Labour, and to receive the publick Correction of the House. *Ibid.* In default of Payment to be sent to Bridewell.

The Commissioners for licensing Hackney Coaches and 10 A. c. 19. Chairs, are hereby impowered, over and above the Number of Chairs licens'd by the 9 A. c. 23. to license any 100 Chairs more licens'd additional Number, not exceeding one Hundred, of such Hackney Chairs, so that the Number of all the said Chairs licens'd by this and the said former Act, do not at any one time exceed three Hundred: And upon every License to be granted by this Act, there shall be reserv'd the like yearly Rent of ten Shillings, to be paid quarterly: And the Persons licens'd shall have the same Rates, and be subject to the same Rules, as are prescrib'd by the said former Act, and Persons carrying every such Hackney Chair

Chair without License, shall incur the same Pains as if this Act had never been made. *Stat. 10 A. c. 19.*

12 A. c. 14.
Widows of
Chairmen to
be first li-
cens'd.

The Commissioners for licensing Coaches and Chairs, are hereby required in the first Place, to license the Widows of all such Chairmen as have died, or shall die possessed of any License, unless such Widows should neglect or refuse to take such Licenses in a reasonable time, to be limited by the said Commissioners, not less than twenty Days. *Stat. 12 A. c. 14.*

Provided that such Widows, their Chairs and Servants, shall be liable to such Rules, Pains, and By-Laws, made or to be made by virtue of the said former Act, as any other licens'd Chairman is liable to. *Ibid.*

1 Geo. c. 57.
By-Laws to
extend to the
Rentors of Li-
censes.

The Commissioners for licensing Hackney Coaches, are hereby impowered to make such Orders and By-Laws, from time to time to bind all Persons licens'd to keep Hackney Coaches, the Rentor or Rentors of such Licenses and Drivers, and to annex such Penalties as they shall think fit, so as the same be made agreeable to the true Intent of this and the former Acts, and do not contain any thing contrary to Law. 1 Geo. c. 57.

Penalty of
Coachman re-
fusing to go,
or exacting
more than his
Fare.

And if any Coachman shall refuse to go at, or exact more for his Hire than he ought by the said former Act, he shall forfeit a Sum at the Discretion of the Commissioners, not exceeding three Pounds, or under ten Shillings; the said Offences to be determined and the Forfeitures to be recover'd, as the pain of forty Shillings is by 9 A. c. 23, *Ibid.*

None but li-
cens'd Coach-
es to attend
Funerals, on
pain of 5 l.

And none shall stand, ply, or drive for Hire, any Coach whatsoever, Hearse, or Coach Horses, to attend any Funeral, within the Bills of Mortality, except such Persons shall be licens'd, on pain of five Pounds, the said Offence to be determined, and the Penalty recover'd, as by the said Act is directed, concerning the Penalty of driving a Coach without License. *Ibid.*

No Coach to
attend a Fune-
ral without a
Figure, except
a Gentleman's
Coach by his
Order on pain
of 5 l.

And if any Person shall drive a Mourning Coach to a Funeral, without a Number fix'd on the fore Standard of such Coach or Hearse, or in some other convenient Place, Figure, except shewing it to be a licens'd Coach or Hearse, or except a Gentleman's the same should be the Coach of some Person of Quality Coach by his or Gentleman's Coach, attending the Master or Mistress, Order on pain or some of their Family, the Commissioners may summon the Driver before them, and in default of his appearing, are impower'd to proceed against him, and altho' no express Hiring be prov'd, yet unless such Party shall appear, and prove a previous Order or Command from the Owner of the Coach or Coach Horses, to attend such Funeral, it shall be adjudg'd a driving for Hire, and the Offender

Offender shall forfeit five Pounds, to be recover'd of the Driver or Undertaker of the Funeral, to be levied and applied as by the said recited Act, concerning the driving of a Hackney Coach without License is directed. To be recovered of the Driver or Undertaker.

And any Person prosecuted for what he shall do in pursuance of this Act, may plead the general Issue, &c. and if Verdict pass for the Defendant, or the Plaintiff discontinued, &c. the Defendant shall have double Costs.

Provided that no *Certiorari* shall supercede Execution or other Proceeding, upon any Order made by the said Commissioners in pursuance of this Act. No *Certiorari* to stay Proceedings.

And every Alderman of London, and every Justice of Peace, within his Jurisdiction, within ten Miles of the said City, may inflict the like Penalties and levy the same, vy the Pains for any Offence against this Act, as the said Commissioners might, so that none be punish'd twice for the same Offence. Any Justice of Peace may levy the Pains and Forfeitures of Coachmen &c.

Coals.

ALL Keils in the Port of *Newcastle*, us'd for carrying Coals from the Land to the Ships, shall be measur'd by Commissioners appointed by the King, and mark'd for what Portage they be, on pain of being forfeited to mark'd his Majesty. *Stat. 9 H. 5. c. 10.*

Every Sack of Coals sold in *London* and *Westminster*, shall contain four Bushels, and any Person selling less Measure, shall forfeit 3 s. 4 d. for every Sack. *Stat. 7 Ed. 6. c. 7.* Sack of Coals to contain 4

All Sea Coals brought into the River of *Thames*, shall be sold by the Chaldron, containing thirty six Bushels heap'd up, and according to the Bushels seal'd for that Purpose at *Guildhall*, and so a greater or lesser Quantity, and other Coals coming from *Scotland* and other Places, to contain 36 Bushels, on pain of 3 s. 4 d.

sold by Weight, shall be sold after the Proportion of 112 Bushels Pound to the Hundred, of *Averdupois* Weight, upon pain of Forfeiture of all Coals otherwise sold, and the double Value thereof, to be recover'd in any Court of Record, or by way of Complaint to the Lord Mayor and Justices of the Peace, within the City of *London*, or to any two of them, or to any two Justices of the Peace where such Coals shall be expos'd to Sale; who upon Proof of the Offence, shall grant their Warrant for levying the Forfeitures: One Moiety whereof shall go to the Prosecutor, and the other to the Use of the Poor, or for repairing of the Highways of the same Parish, or any other adjoining Parishes, to be appointed by the said Lord Mayor between the

To be levied by two Justices of Peace.

To be divided between the

and the Poor, and Justices: And the Lord Mayor and Court of Aldermen or for repairing Highways, or any three of them, (*Quor. Un.*) are impowered to set Court of Aldermen and the Prizes of all Coals to be sold by Retail. *Stat. 16 & 17 Car. 2. c. 2.*

Justices to set the Prices of Coals sold by Retail. And if any Ingrosser or Retailer of Coals, shall refuse to sell for such Prizes, the Lord Mayor, Aldermen, and Justices of Peace respectively, are authoriz'd to appoint Officers to enter into any Wharf or Place where Coals are stor'd up; and in case of Refusal, taking a Constable to force Entrance, and cause the said Coals to be sold at such Rates as the said Lord Mayor, &c. shall judge reasonable, rendering the Money arising thereby, to the Owner. *Ibid.*

And may compel the Performance of their Orders. And if any Person shall be prosecuted for what he shall do in pursuance of this Act, he may plead the general Issue, &c. And if a Verdict be for him, or the Plaintiff be Nonsuit, he shall have Damages and double Costs. *Ibid.*

No Coal Owner to be concern'd in setting the Prices. Provided that no Person having any Interest in any Coal Wharf, or in the ingrossing or selling of Coals, shall act in the setting of Prizes of Coals. *Ibid.*

6 & 7 W. 3. c. 10. Commissioners appointed for marking Boats and Coal Carriages at Newcastle, &c. Commissioners shall from time to time be appointed by his Majesty for measuring and marking all Keils, Pankeils, and Panboats, and other Boats and Wains and Carts, us'd for the Carriage of Coals in the Port of Newcastle upon Tyne, Sunderland, Cullercoats, Sedenshire, Blithnoke, and all other Places in the Counties of Northumberland and Durham, and all the Members, Havens, Rivers, Creeks, and Places, to the said Port of Newcastle, and Counties aforesaid belonging; which said Admeasurement, shall be by a dead Weight of Lead, &c. as shall seem meet to the Commissioners, allowing fifty three Hundred Weight to every Chaldron of Coals. *Stat. 6 & 7 W. 3. cap. 10.*

The Weight of Coals to be carried in any Wain or Cart. Provided that the Weight of Coals carried in every Wain shall be seventeen Hundred Weight and a Half, and the Weight of Coals carried in every Cart eight Hundred and three Quarters, and three such Wains or six such Carts, shall be reckon'd for one Chaldron and no more; and no other Wains or Carts are hereby intended to be measur'd or mark'd, but only such as are employ'd in carrying Coals to the Staiths, to be directly put from the Staiths into the Ships. *Ibid.*

How Boats are to be mark'd. And the Commissioners shall give three Days Notice of the time and place of such Admeasurement, and cause the said Keils or Boats so measur'd, to be mark'd and nail'd on each Side the Stem and Stern, and Midship, or otherwise, as they or any three of them shall direct: And the Persons appointed to mark the said Keils, Boats, Wains and Carts, shall take an Oath before the said Commissioners,

missioners, for the true and impartial Performance thereof. *Ibid.*

Provided no such Keil or Boat be measur'd or mark'd Not to carry in any Year between the 25th of *March*, and the 29th of more than ten *September*, nor shall be mark'd to carry more than ten Chaldron. such Chaldron of Coals at a time; and all Keils and Boats belonging to *Newcastle*, shall be measur'd and mark'd at the New Key of the said Port, and those belonging to the River Ware at *Lambton Stace*, and not elsewhere; and those belonging to *Cullercoats*, *Sedenfluice*, *Blithnoke*, and all other Places in the Counties of *Northumberland* and *Durham*: And all Wains and Carts shall be admeasur'd and mark'd, at such Times and Places as the said Commissioners or any three of them shall direct. *Ibid.*

And every Keil, Boat, Wain or Cart, which shall carry Coals in any of the Places aforesaid, before it be so Vessels or Car-measur'd, mark'd, and nail'd, shall be forfeited together riages to be with the Coals laden thereon: One Moiety to the Crown, forfeited, one and the other to the Informer, to be recover'd in any Moiety to the Court of Record. *Ibid.* Crown, and

And every Person who shall remove or alter any such the other to Mark to frustrate the Intent of this Act, or shall be pri- the Informer. vy to the doing thereof being convicted before a Justice 6 & 7 W. 3. of Peace of the County where the Offence shall be com- c. 10. 101. Pe- mitted, by the Oath of one Witness, he shall forfeit ten nalty for al- Pounds to be levied by Distress and Sale by Warrant, rering Marks. from the said Justice, for want of Distress, the Offender To be levied shall be committed to the County Goal for three Months, by Distress without Bail or Mainprize: One Moiety of the Forfeiture and Sale. to go to the Crown, and the other to the Prosecutor. *Ibid.*

And the said Keils, Carts, &c. whose Marks have been so alter'd, shall be again mark'd by the said Commissioners. *Ibid.*

From the 15th of *May* for five Years, there shall be 9 & 10 W. 3. paid for all Coals and Culm, (except Charcole made of c. 13. Wood) and Cinders made of Pitcoal, over and above all other Duties, the following Sums: viz.

For all Coals imported from *Scotland* and elsewhere be- Duty on so- yond Sea, in case such Coals be sold by Weight, five Shil- reign Coals, lings a Tun, every Tun being twenty Hundred Weight, 5 s. per Tun. and every Hundred 112 Pounds *Averdupoiz*, and so pro- portionably. Stat. 9 & 10 W. 3. cap. 13.

And for all Coals imported, which are sold by Measure, And 7 s. per seven Shillings per Chaldron, the Chaldron being thirty Chaldron. six Bushels *Winchester* Measure, the said Duties to be paid by the Importer. *Ibid.*

English Coals
Water born,
5 s. per Chal-
dron.

3 s. 4 d. per
Tun.

For Culm 1 s.
per Chaldron.

Duties to be
manag'd by
the Commissi-
oners of the
Customs.

Duties to be
paid before
the Coals un-
laden.

Entries to be
made at the
Customhouse.
Coals landed
before Duty
paid to be for-
feited with
the Vessel.

Coal Meeters
to be appoint-
ed, who are to
certify the
Number of
Chaldrons,
&c.

Pain of 10 s.
per Chaldron
and Tun for
Coals con-
ceal'd.

For all Coals Shipt or Water born, and carry'd by Sea from any Port or Place of this Kingdom, and brought or landed in any other Port of this Kingdom, and sold by Measure, five Shillings for every Chaldron, and so for a greater or lesser Quantity; and for all Coals so carry'd from Port to Port in this Kingdom, and sold by Weight, three Shillings and four Pence per Tun, to be paid at the Place of landing such Coals, by the Owner or Master of the Ship or Vessel, or of the Coals so landed. *Ibid.*

And for all Culm so carried from Port to Port in this Kingdom, one Shilling per Chaldron, to be paid at the Place of landing as aforesaid. *Ibid.*

And the said several Duties shall be under the Management of the Commissioners of the Customs, who shall cause the same to be levied and paid into the Exchequer, distinct from all other Branches of the Revenue. *Ibid.*

And the said Duties shall be paid into the Hands of the Collectors thereof, before Bulk shall be broken, or any of the Coals or Culm unladen, or before any Meeter or Weigher shall measure or weigh the same; upon Receipt whereof, the Collectors shall give a Receipt *Gratis*. *Ibid.*

Which shall be a sufficient Discharge to the Party paying it: And due Entries shall be made of all such Coals and Culm imported in the Custom House of the Port where landed; and in case any Coals or Culm shall be unshipt to be laid on Land, before the Duties shall be paid or secur'd, they shall be forfeited, together with the Ship and Vessel, Guns, Tackle, Furniture and Ammunition: one Moiety to the Crown, and the other to the Prosecutor; to be recover'd in the Courts at Westminster. *Ibid.*

And it shall be lawful, for his Majesty, or any four of the said Commissioners of the Customs, under their Hands and Seals, to appoint in every Port of this Kingdom, Meeters, Weighers, or Measurers of Coals and Culm, who shall as soon as any Ship or Vessel is unladen deliver a Certificate under their Hands, to the Persons appointed to receive the said Duties in such Port, of the Sorts, Quantities, and Numbers of Chaldrons or Tuns measur'd or weigh'd, and deliver'd from a Board such Ship or Vessel, on pain of an Hundred Pounds. And in case it shall appear there was in such Ship or Vessel, a greater Number of Chaldrons or Tuns, than for which the said Duties have been paid, there shall be paid to the Crown, by the Master or Owner of such Ship or Vessel, for every Chaldron or Tun so conceal'd, over and above the Duties aforesaid, the Sum of ten Shillings, which in case of Refusal to pay, such Ship or Vessel, with the Tackle, Furniture, and Apparel, shall be attach'd and detain'd by the Officers

Officers of the Port, appointed to receive the said Duties, In default of or to measure or weigh the said Coals or Culm, until Payment Ship Payment, and to sell the said Ship, &c. in case the said to be sold. Duties for the said conceal'd Coals or Culm be not paid with the Charges of such attaching, detaining, or selling.

Ibid.

Provided that if the Importer shall within six Days after the Delivery of the Vessel, and before her Departure, give in his Post Entry, and pay the whole Duty for the said conceal'd Coals, then the Penalty aforesaid shall be discharged. *Ibid.*

And the Collectors of the said Duties, and the said Weighers or Meeters in every Port, shall each of them enter in a Book, a true Account of all such Sums which shall be paid for, or on Account of the said Duties, and of all the Payments and Disbursements of the same; and also an Account of the Numbers of the Chaldrons and Tuns imported and unladen, and of the respective Sorts: And there shall be allow'd to every Master or Owner, three Months time for the Payment of the said Duties, upon giving such Security as the Collector or Chief Officer of the Port shall approve: And there shall be allow'd every Master or Owner 10 l. per Cent. for prompt Payment.

And if any Coals or Culm for which the Duty hath been once paid or secur'd. shall be again exported and carried to any other Place in this Kingdom, there shall be no further Duty paid; and if they shall be carried to any Parts beyond the Seas then an Allowance or Repayment shall be made, of so much as was before paid for the said Coals or Culm. *Ibid.*

Provided that if any Person be prosecuted for what he shall do in pursuance of this Act, he may plead the general Issue, &c. and if a Verdict pass for him, or the Plaintiff be Nonsuited, &c. the Defendant shall have treble Costs. *Ibid.*

There shall be paid for all Cinders made of Pitcoal, during the Term of four Years, commencing from the 15th of May 1699. which shall be shipped or Water born in this Kingdom, or brought into the same, five Shillings per Chaldron, reckoning thirty six Bushels sure to the Chaldron, to be paid at the Place of Landing, by the Owner or Master of the Vessel, the said Duties to be levied by such Means and under the like Pains, as are prescribed by the Stat. 10 & 11 W. 3. cap. 21.

All the Duties laid on Coals and Culm by the Stat. 9 & 10 A. c. 4. Duties on Coals and Cinders used to the 15th of May 1708. Stat. 1 A. c. 4.

4 *A. c. 6.* Duties on Coals, and the Duties on Cinders granted by 9 *W. 3. c. 13.* and continued by 10 & 11 *W. 3. c. 21.* and continued by 1 *A. c. 4.* to the 15th of May 1708. are by this Act further continued to the 30th of September 1710. to be levied and paid in such Manner, and according to such Rules, as by the said former Acts touching Coals, Culm, and Cinders, or the Duties thereof, are prescribed. *Stat. 4 A. c. 6.*

And the said Act of 9 *W. 3. cap. 13.* and so much of the said Act of the 10 & 11 *W. 3. c. 21.* as concerns the said Duty upon Cinders, and all the Powers, Rules, Pains, and Forfeitures, Clauses and Things therein contain'd, for the managing, levying, securing, paying, and accompting for the Duties on Coals, Culm, and Cinders, are hereby reviv'd, and shall be duly observ'd, practis'd and put in Execution, during the Term hereby granted. *Ibid.*

5 *A. c. 7.* An Act for regulating and ascertaining the Duties to be paid by the Unfreemen Importers of Coals into the Port of Great Tarmouth in the County of Norfolk. *Stat. 5 Anne, cap. 7.*

6 *A. c. 22.* Coals exported in foreign Bottoms, charg'd with ten Shillings *per Chaldron*, and in British Bottoms, three Shillings *per Chaldron*, *Repeal'd as to Coals exported in British Bottoms*, by 8 *cap. 13.*

8 *A. c. 4.* After the 29th of September 1710. for thirty two Years, there shall be paid for all Coals, Culm, and Cinders, the additional Duties hereafter mention'd, over and above all Duties already granted: *viz.*

3 *s. per Tun* For all Coals imported into Great Britain from beyond Sea, which are sold by Weight, three Shillings *per Tun*, and 4 *s. 6 d.* every Tun to be twenty Hundred Weight, and every *per Chaldron*, Hundred 112 *l. Averdupoiz*; and for every Chaldron of Coals imported from beyond Sea, and sold by the Chaldron, 4 *s. 6 d. per Chaldron*, reckoning thirty six Bushels Coals carried Coastwise, 3 *s.* to the Chaldron; and for all Coals Shipt and carried from Port to Port in this Kingdom of Great Britain, three Shillings *per Chaldron* and two Shillings *per Tun*. to be paid at the place of Landing, by the Owner or Master of the Ship or Vessel, or of the Coals imported: And for all *per Chaldron* and 2 *s. per Tun.*

8 *A. c. 4.* Culm Ship or Vessel, or of the Coals imported: And for all Culm carried by Sea, from Port to Port in this Kingdom, the Sum of seven Pence and two Tenths of a Penny, to be paid in like manner, and for all Cinders so carried by Sea, from Port to Port, three Shillings *per Chaldron*, to be paid in like manner. *Ibid.*

To be managed by Commissioners of the Customs, The said Duties which shall arise in that part of Great Britain call'd England, to be under the Management of the Commissioners of the Customs in England, who shall cause the same to be levied and paid by the Receiver General, into

into the Receipt of the *Exchequer*, distinct from all other Branches of the Revenue, Weekly, *viz.* on every *Wednesday*; and the said Duties arising in *Scotland*, shall be under the Management of the Commissioners of the Customs there, and their Receiver shall transmit and pay the same into the Receipt of the *Exchequer* in *England*. *Ibid.* And paid into the *Exchequer*.

And the said Duties shall during the Term hereby To be levied granted, be levied and paid, in such Manner, and subject according to to such Allowances, and under such Pains and Forfeitures, former Acts. and according to such Rules, as are prescrib'd by any Statute in Force, concerning the Duties upon Coals, Culm, and Cinders, which have Continuance until the 30th of *September 1710*. by virtue of the 4 *A. c. 6*. And all Powers, Rules, Pains, Forfeitures and Clauses, contain'd in the said last mention'd Act, or in any other Acts thereby refer'd to, for the managing, levying, securing, paying and accompting for the said Duties which were granted to the 30th of *September 1710*. are by this Act reviv'd, and continued during the Term hereby granted, and the said Duties are made part of a Fund for a Lottery, for Made a Fund the raising 1500000 *l.* for the Service of the War. *Ibid.* for a Lottery.

Provided that such Coals, Culm, and Cinders, as shall Saving for be carried from the Bridge of *Sterling* to the Town of Coals carried *Dunbar*, or to any part betwixt them, shall not be liable from *Sterling* to the Duties by this Act impos'd. *Ibid.* to *Dunbar*.

For all Coals which during the Term of thirty two 9 *A. c. 6*. Years, to commence from the 8th of *March 1710*. shall be exported or Shipt to be exported beyond the Seas, shall be paid the Duties following: *viz.*

For all Coals of *Wales* or the West of *England*, Shipt Duty on Coals for *Ireland* or the Isle of *Man*, one Shilling per Chaldron, shipt for *Ireland* for every Chaldron Shipt for the Plantations, two Shillings per Chaldron, reckoning thirty six Bushels to the Chaldron, for Chaldron *Winchester* Measure; and for every Chaldron the Plantation *Newcastle* Measure Shipt for any other Parts beyond the Seas, in foreign Bottoms, twelve Shillings, and in *English* For other Bottoms three Shillings; and for Coals sold by Weight, parts in for the following Duties: *viz.* For such Coals exported for reign Bottoms *Ireland* or the Isle of *Man*, eight Pence per Tun, (twenty 12 *s.* per Chaldron to the Tun) and for such Coals Shipt for the Chaldron, in *English* Plantations, sixteen Pence per Tun; and for such Coals Bottoms 3 *s.* Shipt for any other Parts beyond Sea, one Third part of 8 *d.* per Tun the said Rates charg'd thereupon. in case they were Shipt to *Ireland*, by *Newcastle* Measure: The said Duties to be levied in the Plantations same Manner, and under such Pains and Forfeitures, as 16 *d.* any other Duties payable upon the Exportation of Goods or Merchandizes by this or any other Act, are to be levied and paid. *Ibid.*

Provided

Security to be given for Provided that good Security be given to the Officers of the respective Ports, for the said Coals Shipt for *Ireland*, the *Isle of Man*, or the Plantations, for landing them on, on pain of accordingly, (Danger of the Seas excepted) and in case forfeiting any Ship shall depart out of the Port without giving the Coals and Vessel same, it shall be forfeited, with the Coals therein, or the Value thereof: One Third to the Crown, and the other to the Prosecutor. *Ibid.*

Former Duties on Coals exported, taken off. And during the said Term of thirty two Years, no Duty shall be paid for Coals exported to the Plantations, by virtue of the 15 *Car. 2. cap. 7.* or for any Coals exported in foreign Bottoms, by virtue of the 6 *A. cap. 22.* or for any Coals whatever, exported beyond Sea, other than the Duties by this Act impos'd. *Ibid.*

Coals imported, to pay 2 s. per Tun and 3 s. per Chaldron. And during the said Term of thirty two Years, there shall be paid for all Coals imported into the Kingdom of *Great Britain* from beyond Sea, in case such Coals are sold by Weight, two Shillings per Tun, twenty Hundred Weight to the Tun, and 112 l. to the Hundred; and for Coals carried all Coals imported from beyond Sea, sold by the Chaldron, three Shillings per Chaldron, every Chaldron thirty six Bushels, to be paid by the Importer; and for Coals carried Coastwise from Port to Port in *Great Britain*, two Shillings per Chaldron, and sixteen Pence per Tun, to be paid at the place of Landing, by the Master of the Vessel, or Owner of the Coals; and for all Culm Shipt in *Great Britain*, or brought into the same, four Pence and eight

Culm 4 d. and eight Tenths of a Penny. for every Chaldron. to be paid at the Place of Landing, by the Master or Owner; and for all Cinders made of Pitcoal, Shipt in *Great Britain*, or brought into the same, two Shillings per Chaldron, to be paid at the Place of Landing, as aforesaid. *Ibid.*

To be levied as directed by 4 A. c. 6. And the said Duties on Coals, Culm, and Cinders, carried Coastwise from one part of *Great Britain* to another, shall be levied in such Manner, and subject to such Allowances, and under such Pains, and according to such Rules, as by the 4 *A. cap. 6.* or any other Statute, are prescrib'd, for levying Duties upon Coals, Culm, and Cinders, which had Continuance to the 30th of September 1710. *Ibid.*

Saving for Dunbar. Provided that such Coals, Culm, and Cinders, as shall be carried from the Bridge of *Sterling* to *Dunbar* or *Red-head*, or to any part betwixt them, shall not be liable to the Duties impos'd by this Act. *Ibid.*

Duties to be a Fund for a Lottery. The said Duties are made part of a Fund for a Lottery for raising 1500000 l. for the Service of the War. *Ibid.*

9 A. c. 28. Contracts for All Contracts and Agreements, whether in Writing or not, between any Coal Owners, Lightermen, Fitters, Masters,

sters, or Owners, of Ships or Vessels, Crimps, Coal Fac-ingrossing
 tors, or other Persons whatsoever, for ingrossing Coals, Coals, made
 or for restraining or hindering any Persons from selling, void.
 buying, loading or unloading, navigating or disposing of
 Coals, are declar'd to be illegal and void. And if any
 Coal Owners, Lightermen, Masters of Vessels, or any other
 Persons whatsoever, shall after the first of *June 1711*.
 keep up, continue, act in, make, enter into, sign, seal,
 or be knowingly interested in any Contracts or Agree-
 ments, before declar'd to be illegal and void, or shall
 keep up any Office or Place for the Management of such Offenders to
 Contracts, as Parties to, or knowingly interested in the forfeit as fol-
 low, or shall act or officiate therein, as Officer, Clerk, lows.
 Agent or Servant for the Persons contracting, such Offen- Proprietor of
 der shall forfeit as follows; viz. Every Owner or Propri- Mines 100 l.
 etor of a Pit or Mine of Coal, an Hundred Pounds, every Fitter 50 l.
 Fitter fifty Pounds, and every Master or Owner of a Vef- Master 20 l.
 sel, twenty Pounds, and every Officer, Clerk, Agent, or Officer or Ser-
 vant, twenty Pounds. *Ibid.* vant 20 l.

And every Fitter or other Person, vending or delivering Certificate to
 Coals, shall give a Certificate in Writing, to the Ship be made by
 Master, of the Day of the loading, the Masters and Ships the Fitter of
 Names, and the exact Quantity, and the Names of Col- Coals loaden.
 leries out of which the Coals are wrought, and the Price
 of the Coals that every such Fitter or other Person hath
 sold and loaded on Board; which Certificate, at the Ar-
 rival of the Ship at *London*, shall be registred in the *Cocquet*
Office there, and on Arrival at any other Port, at the And regi-
 Custom House, with the Keeper of the Cocquets there, sted.
 and no more than six Pence shall be paid for Registring:
 And if any Person refuse to give such Certificate, or shall
 give a false Certificate, or if any Master of a Vessel shall
 give in any false Certificate to be registred, or shall not
 in forty eight Hours after Entry of a Ship at the Custom
 House at *London*, or other delivering Port, give in a Cer-
 tificate to be registred, or if the Person who ought to re-
 gister it, or his Clerk or Deputy, shall neglect to register
 the same in twenty four Hours after the Delivery of such
 Certificate into the Office, or shall make a false Entry
 thereof, or refuse to produce it to any Person coming to
 inspect the same, every such Offender shall forfeit ten
 Pounds. And if any Lighterman, Master of a Ship, On pain of
 Crimp Coal Factor, or other Person concern'd in the 10 l.
 Coal Trade shall receive or take any Sallary, Gratuity,
 Reward, Allowance, or Sum of Money, from any Coal
 Owner, Master of a Ship, or other Person, for contract-
 ing, buying, selling, or disposing of any particular Sorts
 of Coals, in Preference of any other Sorts of Coals, or for
 the

Factors guilty of Extortion or Fraud, to forfeit 50 l. the loading any Vessel for the Dispatch, Delivery, or Disposal of the Coals, from on Board of any Ship, before another, or shall sell one Sort of Coals for another, every such Offender shall forfeit fifty Pounds. *Ibid.*

Reward for discovering an Accomplice. And if any Person guilty of the said Offences, shall within three Months after the Offence, discover another Person guilty of any the Offences aforesaid, he shall be discharged of all Pains for such Offences, and receive the same Advantage as any other Discoverer shall be entitled to by virtue of this Act. *Ibid.*

Fleets to sail when ready, on pain that every Master forfeit 50 l. And if any Number of Ships loaden with Coals, exceeding fifty in the whole, shall continue in the Port of *Newcastle*, or in any Place between *Newcastle* and *London*, above seven Days, unless prevented by Wind and Weather, the want of Convoy, or other unavoidable Cause, every Master of a Ship so continuing, shall forfeit fifty Pounds. *Ibid.*

Coast Bonds to be discharged on producing a Certificate of landing the Coals. And if any Master whose Ship is loaden with Coals only, has given Bond to deliver the said Coals in some Port of *Great Britain*, upon producing his Coast-Cocquet, and making Oath of the Quantity of Coals a Board, before the proper Officer of the Port, and paying the Custom or Oversee Duty for such Coals, he shall receive a Certificate thereof sign'd and seal'd by the Customer and Comptroller of such Port; which being given into the Custom House where the Coals were loaden, shall discharge the Coast Bond given by such Master. *Ibid.*

Factor disposing Coals to his own Use, forfeits 50 l. And if any Person acting as Crimp, Husband, Agent, or Factor, for any Ship Master, importing Coals into *London*, shall sell to his own Agents, Partners, or Servants, or to any other Person in trust for him, or for his own Use, any part of the Coals, intrusted to him by any Ship Master to be sold, he shall forfeit for every Offence fifty Pounds. *Ibid.*

Penalty of ten Pounds for loading Coals in a Vessel or Carriage unmark'd. And every Fitter or other Person, loading Coals on Board a Ship or other Vessel, in the Port of *Newcastle*, *Sunderland*, *Cullicoats*, *Slime*, *Blithnoke*, or any other Place to the said Port of *Newcastle* belonging, by, or in any Keil, Cart, Wain, or other Vessel, not measur'd and mark'd, shall forfeit ten Pounds. *Ibid.*

None to employ another's Labourers in the Coal Trade on pain of 5 l. And no Coal Owner of any Mine, in the Counties of *Northumberland* and *Durham*, or in *Newcastle*, or his Overman, Staith Man, Fitter, or Agent, shall knowingly employ any Overman, Under Overman, Pitman, Sinker, Carriage Man, Waggon Driver, Kipper, Keilman, Labourer, or other Person, who shall be retain'd, hir'd, or agreed with, and actually employ'd in the said Coal Trade, by any other Coal Owner, during the time, he shall be employ'd,

ploy'd, and his Wages duly paid, or knowingly keep or employ such Person, on pain of forfeiting for every six Days he shall employ such Person, five Pounds. *Ibid.*

Provided that if any Person retain'd as aforesaid, shall Unless such not be paid his Wages within fourteen Days after the same Labourer is due, he may be employ'd by any other Person whatso- not paid his ever. *Ibid.* Wages.

And all the Pains and Forfeitures aforesaid, shall be Forfeitures distributed: One Moiety to the Crown, and the other divided be- to him that will sue for the same within three Months tween the after the Offence, to be recover'd with full Costs, in any Crown and of the Courts at *Westminster*. *Ibid.* the Prosecu-

This Act to continue for three Years, and from thence tor. to the End of the next Session of Parliament. *Ibid.*

This Act made perpetual by the 1 Geo. c. 26.

Made perpe-

For and during the Term of ten Years, from the 10th tual- of July 1714. there shall be paid by the Master of every 12 A. c. 17. Vessel laden with Coals or Culm, imported into London, 1 d. per Chal- one Penny for every Chaldron of Coals or Culm so im- dron for re- ported, towards the repairing *Dagenham* Breach; and the pairing *Dagen-* Lord Mayor and several other Gentlemen, are appointed *bam* Breach. Trustees, for the ordering and directing the stopping the said Breach, and for receiving and disposing of the Mo- ney and Duties arising by this Act, and nine of the said Trustees are made a *Quorum*, and in case any of them re- fuse to act, or happen to die during the said Term, the Survivors are impowered to elect others in their Room. *Ibid.*

And it is enacted, That every Coal Bushel shall be made Form and Di- round, with a plain and even Bottom, and to be nineteen menfions of Inches and a Half from Outside to Outside, and contain Coal Bushel. one *Winchester* Bushel, and one Quart of Water, according to the Standard describ'd by the 13 W. 3. cap. 5. And all Sea Coals and Culm shall be sold, measur'd, and paid, by the Chaldron, containing thirty six Bushels as afore- said, heap'd up, and no other, and so in Proportion for any greater or lesser Quantity, under the like Pains, as are by Law prescrib'd, in regard to the *Winchester* Bushel. *Ibid.*

And the Treasury shall cause a Bushel to be made of Standard to be Brass, of the Dimensions aforesaid, to be seal'd and kept kept in the in the *Exchequer*, as a Standard for the Purposes aforesaid. *Exchequer*. *Ibid.*

See Churches, Lottery.

Coin, See Gold and Silver Money.

Common.

Common.

20 H. 3. cap. 4. **W** Hereas the great Men of England who have infeoffed Knights and their Freeholders of small Tenements in their great Manors, complain that they cannot make their Profit of the Residue of their Manors, their Tenants. altho' their Feoffees have sufficient Pasture belonging to their Tenements; it is provided, that when such Feoffees shall bring an Assize of Novel Disseisin for their Common of Pasture, and it appears they have as much Pasture as suffices to their Tenement, and free Egress and Regress to such Pasture, then they on whom it was complain'd should go quit of as much as they have made their Profit of their Lands, Wafts, &c. but if it appear that they have disturb'd their Feoffees in their Ingress and Egress, or that they had not sufficient Pasture, the said Feoffees shall recover their Seisin, and have sufficient Pasture with Ingress and Egress as aforesaid, and the Disseisors shall be amerc'd, and yield Damages; and if it appear that such Feoffees had sufficient, the other shall make the Profit of the Residue, and go quit of that Assize. Stat. Merton, 20 H. 3. cap. 4.

13 Ed. 1. c. 46. The abovesaid Statute of Merton shall hold place between Lords of Wafts, Woods and Pastures, and their Neighbours as well as their Tenants, so that their Tenants and Neighbours have sufficient Pasture, and this shall extend to such as claim Pasture as appertaining to their Tenements; but if any claim Common by Feoffment or Grant for a certain Number of Beasts or otherwise which he ought to have of common Right, he shall recover according to his Grant. Stat. 13 Ed. 1. cap. 46.

For a Windmill Sheepcoat Deyry, inlarging of a Court necessary or Courtilage, none shall be griev'd by Assize of Novel Disseisin for Common of Pasture.

Fences of
approv'd
Ground
thrown down,
the next
Towns shall
make them
good.
Usurpers of
Common.

And where one having Right to approve, makes a Hedge or Ditch, which by Night or at other times is privately overthrown, the Towns near adjoining shall be distrain'd to make such Hedge and Ditch again at their own Costs, and to yield Damages.

And where one shall usurp Common during the Minority of an Heir Coverture, or other particular Estate, he shall have no Recovery by Writ of Novel Disseisin if he be desorc'd.

The Statutes of the 20 H. 3. cap. 4. and 13 Ed. 1. 3 & 4 Ed. 6. cap. 43. are confirm'd; and it is enacted, that such Persons as shall bring an Assize on any Branch of the said Damages in Statute.

Statutes, and recover, shall have treble Damages; but it Affizes of is declar'd, that the said two former Acts shall not extend Common of to any Houses built upon Commons or waste Grounds Pasture, which have not the Quantity of three Acres of Ground Former Acts inclos'd and adjoining to the same, or to any Garden, not to extend Orchard, or Pond, taken out of such Wastes. which do to Houses not exceed the Quantity of two Acres. And if any such built on the House built upon the Waste hath above three Acres in- Common clos'd, then the said House and three Acres shall still re- with three main and continue inclos'd, but the Overplus so inclos'd Acres of shall and may be laid open by the Owners of the said Ground. Wastes. Stat. 3 & 4 Ed. 6. cap. 3.

READINGS.

By the Common Law the Lord might im- No Approve-
prove against any that had Common appendant, ment against
but not again a Commoner by Grant. 2 Inst. Commoner
274. 1 Roll. Rep. 365. If the Lord inclose any by Grant.
Part, and leave not sufficient Common in the
Residue, the Commoner may break down the
whole Inclosure. 2 Inst. 88.

The Words in the Statute, that by occasion What Houses
of a Windmill Sheepcoat Deyry, &c. none the Lord may
shall be griev'd by Affize of Novel Disseisin, are erect on the
put but for Example, for the Lord may erect a Common.
House for the Habitation of a Beast-Keeper.
2 Inst. 476. 1 Lev. 62. But it must be shewn that
it was done for his necessary Residence. Where
one inclos'd two Acres of Common to enlarge
the Courtilage of his House, and justify'd by
the Statute of 13 Ed. 3. cap. 46. this was said
not to be good, because he did not say his
House was an ancient House, nor that his
Courtilage was strait. But on the other Side
it was said, that the Statute does not speak of
ancient Houses. Wyndham Justice was of Opi-
nion it ought to be an ancient House, but Twis-
den Justice contra; and it not appearing that
it was for his necessary Residence, Judgment
was given that he could not inclose. Trin.
13 Car. 2. Nevil and Hammerton. 1 Syderf. 79.
But whether necessary it should be an ancient
one, dubitatur. 1 Lev. 62.

Common

Four Kinds
of Common.

Common is that Right which a Man hath of putting his Beasts to Pasture in another's Ground, and of these there are four Kinds, viz. Common in gross, Common appendant, Common appurtenant, and Common because of Neighbourhood or Vicinage.

Common in
gross.

Common in gross belongs to no Land, and must be by Writing or Prescription.

Common ap-
pendant.

Common appendant is a Right belonging to a Man, by reason of Lands he is seiz'd of, to put commonable Cattle, which manure his Land, into the Grounds of another, and this Common is by Prescription, and of common Right, and is appendant to arable Land only, and not to any other Land or House. *Terms of the Law. Verb. Common.* And this sort of Common may be throughout the Year, or limited to a certain Time, or on Condition, but cannot be created at this Day. 1 *Roll. Abr.* 397, 398. 26 *H.* 8. 4. And regularly such Commoner may not use the Common but with his own Beasts, which are Levant and Couchant on the Land.

Common ap-
purtenant.

Common appurtenant is in the same manner as Common appendant, but that it may be used with all manner of Beasts, as well Hogs, Goats, &c. as Horses, Kine, Oxen, Sheep, or such as compass the Ground; and it may be to a House, Meadow or Pasture, as well as to arable Land; and such Common may be made at this Day, and be sever'd from the Land to which it is appurtenant, but so cannot Common appendant. 1 *Roll. Abr.* 399, 400, 401. 1 *Inst.* 122. But Common appurtenant shall be extinct by the Commoners Purchase of part of the Land; but both Common appendant and appurtenant shall be apportion'd on Alienation of part of the Land of which the Common is appendant or appurtenant. 1 *Inst.* 122.

Common be-
cause of Vi-
cinage.

Common because of Vicinage or Neighbourhood is where the Tenants of two Lords, seiz'd of two Towns lying next one another, have used time out of mind to intercommon with

with one another with all manner of commonable Beasts; but the one may not put his Cattle in the others Ground, for then the other Town may distrain them Damage Fesant, or may have an Action of Trespass; but the Commoners may put them into their own Fields, and they may stray into the Fields of the other Town; but the Inhabitants of one Town may not put in as many Beasts as they will, but must have Regard to the Inhabitants of the other Town. *Terms of the Law. Verb. Common.* But this sort of Common being but an Excuse for Trespass, one Town or Manor may inclose against the other. 1 *Inst.* 122.

He that Claims the sole Pasture of Land, Stranger li- or Pasture for a certain Number of Beasts, censed to may license a Stranger to put in his Beasts. Common. 1 *Saund.* 327.

Common in one Manor appendant to another is appendant to the Demesnes, and not to the Services; therefore if any of the Tenancies escheat, the Lord shall not encrease his Common; by reason whereof one can't pre- Where the Owner of the scribe to have *Communiam Pasturae*, or *Piscariae*, Soil may be or *liberam Piscariam*, and exclude the Owner excluded. of the Soil; but one may prescribe to have *solam Vesturam Terra* from such a Day to such a Day, and exclude the Owner of the Soil; and one may prescribe to have *separalem Piscariam*, and exclude the Owner of the Soil wholly from Fishing. 1 *Inst.* 122.

The Lord of the Manor in which the Te- Commoner nants have Common may feed the Common *Sans Number per mie & per tout* of common Right with- must not sur- out Disturbance. 18 *Ed.* 3, 43. 18 *Aff.* 4. If charge the the Owner of the Soil grants to another Com- Common. mons *Sans Number*, yet the Grantee cannot use the Common with so many Cattle that the Grantor shall not have sufficient Common for his Cattle. 12 *H.* 8, 2. And tho' common *Sans Number* is not admeasurable, yet if the Commoner surcharges it, the Lord may distrain. 1 *Saund.* 325. *Bro. Common* 48.

Where the Lord may license a Stranger to Common.

The Lord by Prescription may agift the Cattle of a Stranger in the Common, but not without. 30 *Ed.* 3. 27. And he may license a Stranger to put in his Cattle if he leaves sufficient Common for the Commoners. 2 *Mod.* 6, 7.

Lord looses his Common by Alienation of the Soil.

If the Lord alien in Fee the Soil where the Common is to be taken, saving his Power of Feeding as Lord, he shall have Common there as Lord; but without such saving his Common is gone, and the Alienee of the Soil may feed it as the Lord might have done before. 18 *Ed.* 3. 30. 18 *Aff.* 56.

Prescription for Common at certain times.

Common appendant may be to Common after the Corn is sever'd till it is re-sow'd. 17 *Ed.* 3. 26. And if part only be re-sow'd, he may Common in the Residue. *Truelock* and *Ricksby*, *Yelv.* 185.

A Man may prescribe for Common in certain Lands from the Time the Corn is sever'd until the Lands shall be sow'd again by the Assent of the Commoners, for by Law the Owner cannot plow where another hath Common. *Mich.* 29 & 30 *Eliz.* between *Hawks* and *Molineux*. 1 *Leon.* 73. *Danv.* 796.

A Prescription to have Common appendant for all manner of Cattel is not good, because it comprehends Goats, Hogs, &c. but this is Common appurtenant. 37 *H.* 6. 34 *B.* *Bro. Common* 13.

Common appurtenant proportionable to the Land he holds.

Common is admeasurable according to the Quality and Quantity of the Freehold to which he claims to have this Common Appendant, *i. e.* for all those which are Levant and Couchant on the Lands. 37 *H.* 6. 34. 10 *Ed.* 4. 10. *B.* And so many Cattle as the Land to which the Common is appurtenant may maintain in the Winter, so many shall be said Levant and Couchant; and so many Beasts may be said Levant and Couchant upon a House as may be tied there, and are usually maintain'd in the House. 1 *Danv. Abr.* 797.

He that claims Common by Force of a Prescription, as an Inhabitant of the Town, shall have no other Cattle to Common there but what are Levant and Couchant within the same Town. 15 Ed. 4. 32.

Where the Cattle must be Levant and Couchant in the Town.

If a Commoner hath not any Cattle to manure his Land, he may borrow Cattle to manure it, and may use the Common with them. 45 Ed. 3. 26. Bro. Common 40.

Where Commoner may borrow Cattle.

If there be Common because of Vicinage between the two Towns of *A.* and *B.* and *A.* hath fifty Acres of Common, and *B.* hath one hundred Acres of Common, the Inhabitants of *A.* cannot put more Cattle into their Common than the fifty Acres will depasture, without any regard to the Common of *B.* for the original Cause of this Common was not the Profit of either Town, but to prevent Suits in open Countries for reciprocal Escapes from one Field into the other. Hill. 27 Eliz. Sir Miles Corbet's Case. 1 Danv. 799.

Commoners per Vicinage to put in Cattle proportionable to their Common.

If a Man hath time out of mind had Common of Estovers in a certain Place, to be burnt in such a House, and to mend the old Houses and old Hedges, this is not Common appendant, but appurtenant. 11 H. 6. 11 B. Danv. 801.

Common of Estovers appurtenant.

If a Man and his Ancestors, and all those whose Estate he hath in a House, have had Common for two Beasts in a certain Place, this is not appendant, but appurtenant. 11 H. 6. 12.

If *A.* and all those whose Estate he hath in the Manor of *D.* have had time out of mind a Fold Course, i. e. Common of Pasture for any Number of Sheep not exceeding 300 in a certain Field as appurtenant to the said Manor, he may grant over this Fold Course to another, and so make it in gross. Mich. 11 Car. B. R. between Day and Spooner. Danv. 802.

He that hath a Common in gross for a certain Number of Cattel may put in the Cattel of a Stranger, and use the Common with them. 11 H. 6. 22 B. As may he that hath Common in gross Sans Number. Ibid. 803.

Commoner in gross may put in a Stranger's Cattle.

If the Lord of a Common makes Coney Burrows in the Common, and stores them with Conies, by which the Commoners cannot have sufficient Common, yet the Commoners cannot justify the killing them, but ought to bring their Assize or Action against the Lord. *Trin. 11 Jac. B. R. between Carrel and Park.*

If a Common every Year in a Flood is surrounded with Water, yet the Commoner cannot make a Trench in the Soil to let out the Water, because he has nothing to do with the Soil, but only to take the Grass with the Mouths of his Cattle. 12 *H. 8. 2.* 13 *H. 8. 15.* So neither can the Commoner cut Bushes, Fern, &c. which impair the Common, unless by special Custom; but he may amend and reform a thing abused, and therefore if the Land be full of Mole-Hills he may dig them down, and if Holes be dug in the Common to the Damage of the Land, he may put the Earth dug out into its Place again. *Danv. Abr. 807.*

As to that part of the Statute which prohibits the throwing down the Hedges or Ditches of Lands improv'd, it is held, that if the Profleration was by Day or Night, and done before the Face of the Owners, or so publick that the Offenders might be known, it is not within the Act. 1 *Lev. 108.*

Admeasurement
ment of Com-
mon.

Admeasurement of Common lies for one Commoner against another, but if the Tenant surcharges the Common, the Lord shall not have a Writ of Admeasurement against the Tenant; so if the Lord surcharges the Common, or approve without leaving sufficient, the Tenant shall not have a Writ of Admeasurement against him, but an Assize; and no Writ of Admeasurement lies against a Commoner *Sans* Number, nor shall his Common be admeasur'd. *F. N. B. 125.*

But this Writ of Admeasurement of Pasture is now disus'd, and the Commoners generally take their Remedy by Distresses, Actions on the Case, &c.

If

COMMON.

85

If a Commoner incloses the Common, or builds a House upon the Common, every Commoner may have his Action for his private Damage; but a Presentment in the Leet for such an Inclosure as a common Nuisance to the Inhabitants is void, for this is not a publick or common Nuisance. *9 Rep. 113.*

Altho' four Acres of Land be laid to a new erected Cottage, it will not entitle any to have Common in the Lords Waste. *2 Inst. 740.*

Common of Estovers is a Right of taking Wood out of another's Woods for House Bote, Hay-bote, and Plow blote. By House-Bote is meant Timber to build or repair the House, or Wood to burn in the House, and it is sometimes call'd Fire-bote; by Plow-bote is meant Wood to repair Plows, Carts, and other Instruments and Utensils of Husbandry; by Hay-bote, or Hedge-bote, is meant Wood for repairing Gates and Fences. *1 Inst. 41. 2 Inst. 18.*

Where one is entituled to Estovers to burn, and alters the Rooms of his House without making new Chimneys, or if he do build new Chimneys, or make new Additions to his House, he shall not lose his Estovers, but he cannot spend them in the new Chimneys, or in the Part newly added. *Co. 4. Rep. 37.*

Common of Turbary, from *Turba, a Turf*, is a License to dig Turf in another's Ground, or in the Lords, Waste, and this must be appendant to an House, not to Land, for Turfs are to be burnt in the House. *Co. 4. Rep. 37.* And it may be appurtenant and in gross, but it does not give any Right to the Trees or Mines. *1 Inst. 4.* And there is also a Common or Liberty of digging Coals, Gravel, Sand, &c. as well as Turf.

Common of Piscary is a Right of Fishing in another Man's Waters, and one may prescribe to have separate Right of Fishing in such a Water, and the Owner of the Soil be excluded; and if one grant *separalem Piscariam*, neither

COMMON PLEAS.

the Soil nor the Water pass, but only a Right of Fishing. 1 *Inst.* 4. 164.

Common may be inclosed and divided by Consent.

Where an Agreement was made for inclosing the Common, and sharing it between the Parties, this was decreed in Chancery to be perform'd; but it was decreed farther, that if any Persons who had an Interest in the said Common, and were not Parties to that Agreement, they should not be concluded by it, provided that it should not be in the Power of one or two obstinate Persons to oppose the publick Good. *Cases in Chanc. Part 1. Fol. 48.*

See *Titles Approvement, By-Laws, Copyholds.*

Common Pleas.

Mag. Chart.
c. 11.

Common Pleas shall be holden in some certain Place, and not follow the King's Court. *Stat. Mag. Chart. cap. 11.*

28 *Ed. 1. c. 4.* Common Pleas shall not be holden in the Exchequer contrary to *Magna. Charta.* 28 *Ed. 1. cap. 4.*

3 *Ed. 3. c. 11.* Whereas by removing the Common Bench, Pleas have often times remain'd without Day, the Justices from henceforth, before the Common Bench is removed, shall be warn'd by a time, so that they may adjourn the Parties. *Stat. 2 Ed. 3. cap. 11.*

READINGS.

Court of
Common
Pleas when
created,

This Court was not created by *Magna Charta*, for at that time there were *Justiciarii de Banco, &c.* and Sir *Edward Coke* is of Opinion, in his Preface to the 8th Report, that it was constituted before the Conquest; but before this Act Common Pleas might have been held in *Banco Regis*, and all original Writs were returnable there, 2 *Inst.* 21.

Writs returnable in this Court are *coram Justiciariis nostris apud Westm.* or other certain Place; but Writs returnable in the King's-Bench are

are *coram nobis ubicunque fuerimus in Anglia.*

1 *Inst.* 71. 2 *Inst.* 22, 166, 554.

This Court hath Jurisdiction throughout Eng- Its Jurisdi-
land in all Civil Causes, whether real, perso- tion.

nal, or mixt. Real are those which concern Inheritances; personal Actions, are of things transitory, as Money, Goods and Chattels; mixt Actions partake of the Nature of both, as in *Ejectione firmæ*, *Quare Impedit*, and Waste; wherein is recovered not only the Land, or Parsonage, &c. but also Damages for detaining them, or disturbing the Plaintiff in his Presentation. 4 *Inst.* 99, 100, 118.

Also Actions popular, as *decies tantum Champerte*, Maintenance, &c. and Actions of Debt on penal Statutes, where the Penalty is given to them that will sue for the same, may be brought here.

In personal and mixt Actions this Court and the King's-Bench have for the most part a con- It has no Cog-
nizance of
current Jurisdiction, but the Court of Com- Pleas of the
mon Pleas hath no Cognizance of Pleas of the Crown.
Crown.

This Court without any Writ upon a Sug-
gestion may grant Prohibitions to keep Tem-
poral and Ecclesiastical Courts within their due
Bounds. 4 *Inst.* 99.

In this Court are four Judges created by Judges and
Letters Patents, of whom the Chief Justice is Officers of
a Lord by his Office. He is install'd, or plac'd this Court,
on the Bench, by the Lord Chancellor or
Keeper, and the others by the Lord Chancel-
lor or Keeper, and the Lord Chief Justice of
this Court. 4 *Inst.* 100. The Seal of this Court
is committed to the Custody of the Lord Chief
Justice. 2 *Inst.* 555.

The other Officers of the Common Pleas
are, 1. The *Custos Brevium*, who is the chief
Clerk of this Court. He keeps all Writs re-
turnable here, and at the end of every Term
receives from the Prothonotaries all the Re-
cords of *Nisi Prius* or *Postea's*. He also enters
all Writs of Covenant, and Concords of Fines,

and makes out Exemplifications, and Copies of all Writs and Records, and also the foot of every Fine is fil'd with him.

2. The Prothonotaries of this Court are three, who in their several Offices enter and enrol all Declarations, Pleadings, Assizes, and Judgments, and all other Entries of the Clerks and Attorneys belonging to their respective Offices. They also make out all Judicial Writs, *Venire facias*, and *Habeas Corpora*, Writs of Execution and Seisin, Writs of Privilege to remove Causes from inferior Courts, and *Habeas Corp. cum Causa procedendo*, *Scire Facias*, Writs of Enquiry of Damages, and all Process upon Prohibitions, *Audita Querela*, and false Judgments. They also enrol all Recognizances acknowledged here, and all common Recoveries, and may make Exemplifications of any Record of the same Term before the Rolls are deliver'd out of their Hands.

Every one of these Prothonotaries have a Secondary, who takes Minutes, and draws up all Orders and Rules of Court, &c.

3. The Clerk of the Warrants, who enters all Warrants of Attorney, and all Deeds of Bargain and Sale acknowledged in Court, or before any Judge of the Court, and estreats into the Exchequer all Issues, Fines and Amercements accruing to the Crown in this Court.

4. The Clerk of the Efoigns, who keeps the Roll thereof, and enters all Actions where Efoigns do lie; he also provides Parchment for Rolls, and marks the Numbers thereon, and delivers out the Rolls and receives them again after they are written, and makes them up in Bundles or Files each Term.

5. There are fourteen Filazers, who have the several Counties of *England* divided amongst them, and make out all mean Process, as *Capias alias plures*, &c. between the original Writ and the Declaration; but where it is an Attachment, or Bill of Privilege, Prohibition, or the like, this is in the Prothonotaries Office.

The

The Philazers also make out all Writs of View, and Writs of *Supersedeas*, where the Defendant appears in their Office after *Capias* awarded.

6. There are four Exigenter, who are appointed for several Counties, to make out all Exigents and Proclamations, in order to an Outlawry upon the Return of the *Plures Capias* brought to them.

7. The Clerk of the *Supersedeas*, who makes out Writs to supersede Outlawries upon the Parties appearing to the Exigent.

8. The Clerk of the Outlawries, who makes out the *Capias Utlagatum* upon the Return of the Exigent.

9. The Clerks of the Juries, who makes out all *Habeas Corpora Juratorum*, and *distringas Juratorum*, for summoning Juries to appear either in Court or at the Assizes after the Panel is return'd by the Sheriff on the *Venire Facias*, and enters in his Rolls the awarding of the said Writ.

10. The Chirographer, who engrosseth all Fines upon Writs of Covenant after they are pass'd through the other Offices, and records them, and delivers Indentures of them to the Parties. He also, by himself or his Deputy, proclaims all Fines in Court, and indorses the Proclamations at the Office of the *Custos Bre-vium*, but keeps the Writ of Covenant and the Note of the Fine in his own Office.

11. The Clerk of the King's Silver, who enters the Substance of the Writ of Covenant in a Book, and the Money which the King is to have for the Post Fines according to the Value of the Land.

12. Clerk of the Inrollments of Fines and Recoveries, he returns all Writs of Covenant upon Fines, and all Writs of Entry, Summons, and Seisin upon common Recoveries.

13. The Clerk of the Treasury, who has the keeping of all the Records of the Court, and makes Copies and Exemplifications thereof, and
makes

COMMON PLEAS.

makes up and seals all Records of *Nisi Prius* which are after the same Term wherein Issue is join'd.

14. The Clerk of the Errors, who makes out the *Supersedeas* upon Writs of Error, and transcribes the Records out of the Common Pleas into the King's-Bench.

15. The Clerk of the Seal, who seals all Writs Judicial and Ministerial, and also of all mean Process made by the Philazers, and Writs of Outlawry and *Supersedeas*, and all Patents and Exemplifications.

16. The Warden of the Fleet, to whom all Prisoners are committed by this Court; there is also a Proclamator of the Court, a Keeper of the Court, and four Cryers or Tipstiffs.

None may plead at the Bar of the Court, or sign any special Pleadings here, but Serjeants at Law.

There are also Attorneys of this Court, whose Numbers are unlimited.

All Actions cognizable in this Court come hither either by original, as Arrests and Outlawries, or by Attachment of Privilege by or against privileg'd Persons; or out of inferior Courts not of Record, by *Pone Recordare*, *Accedas ad Curiam*, or Writ of false Judgment.

Pone is a Writ whereby a Cause depending in the County Court, or other inferior Court, is removed into the Common Pleas. *F. N. B.* 69.

Recordare facias loquelam is a Writ commanding the Sheriff to make a Record of the Proceedings in the County Court, &c. by Writ or without Writ, and send it up to the Common Pleas, &c. and is in the Nature of a *Certiorari*. *F. N. B.* 70.

Accedas ad Curiam is a Writ to remove a Complaint out of any other Court Baron but the County Court, and is directed to the Sheriff to make a Record of the Suit in Presence of the Suitors, and to certify it into the King's Court. *F. N. B.* 19, 70.

A Writ

CONDITIONS *and* Covenants.

91

A Writ of false Judgment, is to correct a Judgment given in a Court not of Record. *F. N. B.* 17, 18.

Conditions *and* Covenants.

ALL Grantees of Reversions, shall have and enjoy the same Advantage, Benefit, and Remedies, by Action only, against all Lessees, Farmers, and Grantees, their Executors, Administrators, and Assigns, as the Lessors or Grantors themselves might or ought to have had, or enjoy'd, for not performing the Conditions, Covenants, or Agreements, contain'd in their Leases; and all Farmers, Lessees and Grantees, for Term of Years or Lives, their Executors, Administrators, and Assigns, shall have like Action against the Grantees of the Reversion, for any Condition, Covenant, or Agreement, contain'd in their Leases, as the same Lessees might and should have had against the said Lessors and Grantors, their Heirs or Successors, all Advantages of Recoveries in Value, by reason of any Warranty in Deed or Law, by Voucher or otherwise only excepted. *Stat. 32 H. 8. cap. 34.*

32 H. 8. c. 34.
Grantees of Reversions may take Advantage of Conditions and Covenants against the Lessees. And Lessees may have the like Remedy against Grantees.

R E A D I N G S.

Covenant upon Demurrer, the Case was, *A.* Lessee for twenty Years, grants it by Indenture to *W.* for ten Years, wherein he covenants, at the End of the Term to leave it sufficiently repair'd, and the Possession to the Lessor, his Executors or Assigns; afterwards *A.* assign'd the Reversion to the Plaintiff, and because the Defendant at the End of ten Years, did not deliver up unto him the Tenement sufficiently repair'd, he brought this Action: And it was first moved, whether this Action lay by the Statute of 32 *H. 8.* for an Assignee of a Reversion for Years, and therein the whole Court held, that it did. Secondly, This Covenant is collateral, *viz.* for the delivering of a Possession, and it was not broken until after the Term determin'd, and therefore the Assignee cannot have any Advantage thereof, for he was not Farmer when it was broken, but only Tenant

Covenant to repair, held to be within the Statute of 32 *H. 8.*

Tenant at Sufferance : And of that Opinion was *Fenner*, but all the other three Justices *e contra*, for there cannot be a more apt Covenant to run with the Land, than to leave it sufficiently repair'd, and that is broken instantly with the Determination of the Estate ; wherefore they resolved for the Plaintiff : But then an Exception was taken to the Declaration, *viz.* That he did not aver that he had the Reversion at the time of the Grant ; but it is alledg'd, that *A.* lett to the Defendant for Years, and afterwards granted the Reversion to the Plaintiff, to which Grant the Defendant attorn'd, and it was holden, to be an apparent Fault. *Vide 7 H. 7. 3.* Wherefore for this Cause, it was adjudged for the Defendant. *Matures v. Westwood. Hill. 40 Eliz. Cro. Eliz. 599.*

This Act does not extend to Copyhold.

If a Man has the Reversion of a Copyhold by way of Surrender, he cannot take Advantage of a Covenant or Condition within the Equity of the Statute of 32 *H. 8. cap. 34.*

Or to Covenants on Estates in Fee or Tail.

This Statute of 32 *H. 8.* doth not extend to Covenants upon Estates in Fee or in Tail, but only upon Leases made for Life, or for Years. *Trin. 43 Eliz. Lewes v. Ridge. Cro. Eliz. 863. 1 Inst. 215.*

Extends to Assignees of part of the Reversion.

This Statute extends to Assignees of part of the Estate of the Reversion, as when the Reversion on a Lease for Life, if granted for Life, or a Reversion on a Lease for Years, if granted for Years, because the Act speaks of Executors of the Grantees, but not to Assignees of the Reversion of part of the Land ; for in that Case the Condition being entire and against common Right, is destroy'd ; except in the King's Case, in whom the Condition still remains ; and in the Case of a Subject, the Condition may be apportion'd by Act of Law, as when part of the Reversion goes to the Heir at Law, and the other to the Heir by Custom of Borough *English*, and when Attornment was necessary, the Grantee could not take any Benefit of the Condition without it, for it must be intended of such only

as have had all Ceremonies by Law requisite.

1 *Inst.* 215.

This Statute extends to the Bargainee, or any And to Bar- other that comes in by Execution of the Use to gainee, &c. the Possession, tho' they be not in by the Bargain- or, &c. but it extends not to Lord by Escheat or claiming, by reason of Mortmain; but the Bargainee, &c. cannot take any Benefit of a Con- dition, without giving Notice to the Lessee.

1 *Inst.* 215.

And the Condition must be for doing some- thing incident to the Reversion, as for Payment of Rent, Repairs, Waste, &c. and not for doing any thing in Gross, for the Act puts examples on- ly of the first Sort. *Ibid.*

A. devises to B. for Years, rendring Rent upon Condition to re-enter for Non-payment, and af- ter devises the Reversion in Fee to another, and dies, the Devisee may take Advantage of the Con- dition, tho' there was never any Reversion, &c. in the Devisor. 2 *Leon.* 33. *per totam Curiam.*

If Lessee for thirty Years leases to another for ten, he is no Assignee within the Statute, for he is not Tenant to the first Lessor. *Mor.* 93. *Pl.* 230.

Constables.

FROM the Day of *Ascension* to *Michaelmas* every Year, *Wint.* 13 *Ed.* 1. a Watch shall be kept all Night, from Sunset to Sun- c. 4. Consta- rise, in every City, by six Men at every Gate, in every bles to ap- Borough twelve Men, and in every Town, six, or four. point a Watch according to the Number of Inhabitants; and if any from *Ascension* Stranger pass by, he shall be arrested until Morning, and Day to Mi- if no Suspicion be found, he shall go quit; but if they *Michaelmas.* find cause of Suspicion, they shall forthwith deliver him to the Sheriff, who shall keep him safely until he be duly acquitted; and if he will not obey the Arrest, they shall follow him with Hue and Cry, from Town to Town, until he be taken, and deliver'd to the Sheriff as afore- said. *Stat. of Winton* 13 *Ed.* 1. *cap.* 4.

In every Hundred and Franchise, two Constables shall And present be chosen, who shall present all such Persons as make de- Persons who fault make default

in watching.
And who
lodge Stran-
gers.

5 Ed. 3. c. 14.
And arrest Ro-
berds-men.

5 Eliz. c. 4.
High Consta-
bles to hold
Statute Sessi-
ons.

13 & 14 C. 2.
c. 12. Justices
of Peace to ap-
point Consta-
bles where any
die or remove.
Constable to
be in Office
but a Year.

1 W. & M.
c. 18. Dissen-
ting Consta-
ble may ap-
point a Depu-
ty.

Dissenting
Teachers ex-
empted from
Offices.

6 W. 3. c. 4.
And Apothe-
caries.

7 & 8 W. 3. c. 21
And registred.
Seamen.
10 & 11 W. 3.
c. 23. And Pro-
secutors of
Felons.

fault in Watching, and all such Persons as lodge Stran-
gers in Upland Towns for whom they will not answer.
Ibid.

If any shall be suspected for Roberds-men, Wasters and
Draw Latches, they shall be arrested by the Constables,
and deliver'd to the Sheriff or Bailiff of the Franchise, and
kept in Prison till the next Goal Delivery. *Stat. 5 Ed. 3.
cap. 14.*

It shall be lawful for High Constables of Hundreds
in every Shire, to hold their Petty Sessions, otherwise cal-
led Statute Sessions, within the Limits of their Authori-
ties, as heretofore hath been us'd and accustom'd. *Stat.
5 Eliz. cap. 4.*

If any Constable, Headborough, or Tythingman, shall
die, or go out of the Parish, any two Justices of Peace
may make and swear a new Constable, Headborough, or
Tythingman, until the Lord of the Mannor shall hold a
Court Leet, or until the next Quarter Sessions, who shall
approve of the said Officers, or appoint others as they
shall think fit: And if any Officer shall continue above a
Year in his Office, then the Justices of Peace in their
Quarter Sessions may discharge such Officer, and put ano-
ther fit Person in his Place, until the Lord of the Man-
nor shall hold a Court. *Stat. 13 & 14 Car. 2. cap. 12.*

If any Dissenter shall be chosen, or otherwise appointed
to bear the Office of High Constable, or Petty Constable,
or any other Parochial or Ward Office, and shall scruple
to take upon him any the said Offices, by reason of the
Oaths, or any other Matter or Thing required by Law
to be taken or done in respect of such Office, such Person
shall and may execute such Office by a Deputy, who shall
comply with the Law in this Behalf. *Stat. 1 W. & M.
cap. 18.*

Preachers and Teachers of separate Congregations, who
shall take the Oaths and subscribe the Declaration men-
tioned in this Act, and subscribe the Articles of the
Church of England, are exempted from serving as Consta-
bles, or any other Parish or Ward Offices. *Ibid.*

Apothecaries also are exempted from serving Parish or
Ward Offices.

Register'd Seamen are also exempted from serving.

Persons who have prosecuted any Felon to Conviction,
are also exempted from serving Parish and Ward Offices,
and their Assignees, within the Parish and Ward where
such Felony was committed. *Stat. 10 & 11 W. 3. c. 23.*

All Persons pretending to be Patent-Gatherers, or Col-
lectors for Prisons, Goals or Hospitals, and wandring
abroad for that purpose; all Fencers, Bear-Wards, com-

mon

non Players of Interludes, Minstrels, Juglers; all Persons pretending to be Gypsies, or wandering in the Habit Vagrants de- or Form of counterfeit Egyptians, or pretending to have scribed. Skill in Physiognomy, Palmistry, or like crafty Science, or pretending to tell Fortunes, or like phantastical Imaginations, or using any subtle Craft, or unlawful Games or Plays; all Persons able in Body who run away and leave their Wives and Children to the Parish, and not having wherewith otherwise to maintain themselves, use Loitering, and refuse to work for the usual and common Wages; and all other idle Persons wandering abroad and begging (except Soldiers or Seamen, licens'd by a Testimonial under the Hand and Seal of some Justice of Peace, setting down the Time and Place of their Landing, and the Place to which they are to pass, and limiting the Time of their Passage while they continue in the direct Way to the Place to which they are to pass, and during the Time so limited) shall be deem'd Rogues and Vagabonds. Stat. 12 Ann. c. 23.

And if any such Rogue shall be found wandering and Who shall be begging, or misordering him or her self as aforesaid, it apprehended shall be lawful for the Constable, or any other Person, by the Con- to apprehend such Rogue or Vagabond and convey them stable, or to some Justice of Peace in or near the Parish or Place other Officer. where he or she shall be so apprehended; and if the Con- stable, or other Officer, of any Parish or Place shall re- fuse or neglect to use his best Endeavours to apprehend such Rogue or Vagabond, it shall be deemed a Neglect of Duty; and if any other Inhabitant of any Parish or Place being required by a Justice of Peace, or other law- ful Authority, shall refuse or neglect to use his best En- deavour to apprehend and deliver to the Constable, or carry before a Justice of Peace where no Constable or other Officer shall be found, any such Rogue or Vagabond who shall be seen or known to resort to any House to beg, and shall be convicted thereof by one Witness before a Justice of Peace, he shall forfeit 10 s. to the Poor of the Parish, to be levied by Distress and Sale. And if any Person shall apprehend such Rogue or Vagabond and bring him or her before a Justice of Peace, the Justice may re- ward such Person, by ordering under his Hand and Seal any Constable, or other Officer, where such Vagabond Constable to was found begging and pass'd unapprehended, to pay 2 s. forfeit 2 s. to the Apprehender; which if such Constable, or other where a Beg- Officer do not pay upon Demand, the Justice by Warrant gar passes un- under his Hand and Seal may levy the Sum of 20 s. by apprehended. Distress and Sale of the Goods of such Constable, or other Officer,

Officer, and thereout allow to the Apprehender the said 2 s. and such other Recompence for his Trouble, Loss of Time, and Expences, as he shall think fit. *Ibid.*

12 *An. c. 23.* And the Justices of Peace of every County, Division, Liberty, Town-corporate, or any two of them, before every Quarter-Sessions of the Peace, or oftner if need be, shall meet, and by Warrant command the Constables of every Hundred, Parish, Town, and Hamlet, to make a general privy Search for Vagrants before every Quarter-Sessions. Limits for apprehending Rogues, Vagabonds, and sturdy Beggars, and cause them to be brought before a Justice of Peace. *Ibid.*

Who are to be sent to the Place of their last legal Settlement. And where any Person apprehended by any Constable, or other Officer, or Inhabitant of any Parish or Place, or upon such privy Search, shall be brought before a Justice of Peace, he shall inform himself as well by the Oath of the Person apprehended as of any other Persons, or by any other Means, of the Circumstances of the Person apprehended, and their Place of Abode or Birth; which Examination shall be sign'd by the Persons examin'd, and transmitted to the next Quarter-Sessions, there to be kept on Record. And if such Person have obtain'd any legal Settlement, he shall be sent to the Place of such Settlement in such manner as by Law other Persons likely to be chargeable to the Parish are to be sent; but if he hath

And if they obtain'd no legal Settlement since his Birth, the Justice have obtain'd of Peace is requir'd by a Pass, directed to the Constable none, to be where such Rogue was apprehended, to cause him, of sent by a Pass whatever Age he be, to be convey'd to the Place of his to the Place Birth; or if he be under 14 Years of Age, and have a of their Birth, Father or Mother living, to the Place of Abode of such &c. Father or Mother; but if that cannot be known, then to the Parish or Town where such Vagrant was last found begging or misordering him or her self, and pass'd unapprehended, to be deliver'd to the Constable, or other Officer there; which Pass shall be in the Form, or to the Effect, following.

To the Constable of the Parish of _____ in the County of _____ or to the Tything-Man, &c. as the Case shall be.

Form of the Pass. Whereas _____ being, as he informs us, about the Age of _____ Years, was apprehended in the Parish of _____ afore said, (or in the Town of _____) there wandering and begging, (or there pretending himself to be Collector for the Prisons, &c. and wandering for that purpose, or there practising as a Fencer,

Fencer, &c. as the Case shall require) and brought before me one of Her Majesty's Justices of the Peace for this County, and upon Examination of the said and of taken before me upon Oath, it doth appear that the said was born at in this County, (or in the County of or that the said is under the Age of 14 Years, and hath a Father living and abiding in the Parish or Town of or that the said was found begging in the Parish of where he last past through unapprehended, and the Place of his or her Birth cannot be discovered; and it doth not appear to me that the said hath obtain'd any legal Settlement since his or her Birth) these are therefore to require you to convey the said in the next direct way to the said Parish or Town of and there deliver him to the Constable, or other Officer, of the same Parish or Town, to be there provided for according to Law, (or in case the same Place be out of the said County, Riding, Corporation, or Franchise, which hath separate Quarter-Sessions of the Peace, then it shall be, to convey the said to the Parish or Town of that being the first Town in the next Precinct through which he ought to pass to the said Parish or Town of to be thence convey'd on according to the Directions of this Act to the said Parish or Town of) and I do hereby allow the Space of Days for his or her passing to the said Parish or Town of

Given under my Hand and Seal this Day, &c.

Provided that if any Person who hath obtain'd a legal Vagrant to be Settlement be found wandring and begging, and misordering whipp'd by him or her self as aforesaid, he or she, as well as any other the Constable, Rogue or Vagabond, may by such Justice of Peace, before ble, or sent to their being sent by such Order or Pass as aforesaid, if the the House of Justice think proper, be order'd to be stript naked from Correction, the Middle and openly whipt until his or her Body be bloody, or may be sent to the House of Correction according to the Nature and Merit of the Offence, at the Discretion of such Justice, and shall then be sent away by a Pass as aforesaid; which Whipping or conveying to the House of Correction the Constable, &c. shall see duly executed. *Ibid.*

And the Charges of conveying such Rogues as have ob- How the
tain'd no legal Settlement shall be born and defray'd in Charges are
VOL. II. H the to be born

the same manner as the Charge of conveying other Rogues and Vagabonds sent to the Place of their Birth is to be born. *Ibid.*

Certificate to be deliver'd to the Constable, and a Sum ascertained for the Charges. Form of the Certificate.

And the Justices of Peace who shall make such Passes for passing any Vagabond as aforesaid, shall at the same time deliver unto the Constable a Certificate ascertaining how they shall be convey'd, by Horse, Cart, or on Foot, and whither, and in what Time, and what Allowance such Officer shall have for conveying them to the Place to which he is to pass them, in the Form, or to the Effect, following: *viz.*

Whereas by a Pass (*reciting the Substance or Effect of the said Pass*) I do hereby order and direct that the said Person or Persons is or are to be convey'd on Foot, (*or in a Cart, or by Horse, &c.*) to the said Parish or Town of _____ in _____ Days time, for which the said Constable, &c. is to be allow'd the Sum of _____ and no more.

Given under my Hand this _____

Day, &c.

And the Constable, &c. who shall receive such Passes and Certificate is requir'd to convey such Vagrant as by the said Pass is directed the direct Way whither they are order'd to be sent, if such Place be in the same County Division, &c. and if it be not in the same County, then to the first Town of the County Division, &c. through which such Vagrant is to pass in the direct Way to the Place whither so sent, and deliver him to the Constable of such Town or Place, together with the said Pass, taking a Receipt of such Delivery upon the said Certificate under the Hand of the Constable, or other Officer, to whom deliver'd, who shall forthwith receive such Vagrant, and sign such Receipt with all convenient Speed, and apply to some Justice of Peace, who shall cause such Vagrant to be stript naked and openly whipt, or sent to the House of Correction and kept to hard Labour for two or three Days, and then be convey'd with the former Pass, and with a new Order and Certificate, in like Form as before *mutatis mutandis*, and so from one County or Precinct to another until such Vagrant shall be brought to the Place whither first order'd to be sent, and there deliver'd to the Constable, who shall receive them, together with the Pass, and sign a Receipt of such Delivery as aforesaid. *Ibid.*

Or the next Constable not receive any Person unless it appear by the Pass that he has been

been whipt or sent to the House of Correction in the bound to re-
County, &c. from which he last past, except Women great ceive him;
with Child, Soldiers having lawful Certificates, or such
as the Justice shall judge not able to undergo such Punish-
ment which shall be certified in the Pass. *Ibid.*

And the Justices of Peace in their Sessions shall appoint Rates to be
what Allowances *per* Mile, &c. or otherwise shall be made, made at the
for passing or maintaining such Vagrants, and may also Sessions for
make such other Orders for the more regularly proceed- passing Va-
ing therein; which Rates, Allowances, and Orders, shall grants.
be observ'd by all other Justices of Peace, Constables, &c.
within their respective Limits and Jurisdictions. *Ibid.*

And the said Justices at their Quarter-Sessions may by To be rais'd;
such ways as Monies for Gounty Goals, or Bridges are as Money for
rais'd, cause such Sums to be rais'd for passing and main- County
taining Vagrants as shall be necessary; which Monies shall Goals is.
be quarterly paid to the chief Constables of each Divi- And paid to
sion, so as they may have a quarterly Payment in their the High-
Hands for the Purposes hereafter mentioned; and the Constable.
said chief Constables twice a Year, or oftner as the said
Justices shall direct, shall account for the same with the
Treasurer of the County, &c. *Ibid.*

And if any petty Constable, or other Officer, shall Who shall
bring to such chief Constable a Certificate from any pay the petty
Justice of Peace as aforesaid, ascertaining how and for Constables
what Rates he is requir'd to convey any such Vagrants, their Charges;
together with a Receipt from the Constable to whom
such Vagrants were deliver'd, the said chief Conable shall
pay unto such petty Constable the Rates ascertain'd in
such Certificate, taking from him the said Certificate,
and his Receipt for the said Sum, which the chief Constable
shall be allow'd to discomnt with the Treasurer of the
County. *Ibid.*

If any petty Constable, or other Officer, shall counter- Petty Constable
feit any such Certificate, Receipt, or Note, or alter any ble not doing
Sum therein, or shall not really convey the Vagrant to his Duty, or
the Place where he is order'd to be sent, he shall forfeit forging Re-
20 l. one Moiety to the Poor of the Parish, and the ceipt, &c. to
other to the Informer, to be levied by Distress and Sale forfeit 20 l.
by Warrant from any Justice of Peace. *Ibid.*

And it shall be lawful for any Justice to examine the
Constable, or other Officer upon Oath, whether he did con-
vey the Person according to the Pass, and to whom he deli-
ver'd him; and if he refuse to be sworn, or it appear he hath
neglected his Duty, he shall lose the Allowance he would
have been entitled to by the said Certificate *Ibid.*

And the Parish to which any Vagrant shall be convey'd Vagrant
shall set him to work, or place him in some Work-house pass'd Home

to be set to
work.

And any Pa-
rish suffering
him to escape
again to pay
the Charges
of re-convey-
ing him.

Vagrant wan-
dring a se-
cond time to
be adjudged
an incorrigi-
ble Rogue.
Vagrant who
has no Settle-
ment may be
sent to the
Plantations.
As also an in-
corrigible
Rogue.

or Alms-house, until he betake himself to some Service or other Employment; and if he refuse to work, the Overseers of the Poor, or one of them, may cause such Person to be carried before a Justice of Peace, in order to be sent to the House of Correction; and if any Parish or Place shall not employ, but shall encourage or permit such Vagrant to escape or wander about again, and he shall be taken up begging and misordering himself in any other County or Parish, it shall be lawful for any Justice of the County to compute the Charge the County will be put to by apprehending, punishing, or passing such Vagrant, and the said Justice shall by his Warrant order the same to be levied upon any of the Constables, Church-wardens, or overseers of the Poor, so in Default by distress and Sale; or if such Parish in Default be in another County, then the Warrant shall be brought to some Justice of Peace of that County, who shall cause the same to be levied in manner aforesaid, and paid for the Use of the County or Place where such Charge was expended, and the Constable, or other Officer, may put the same in his Rate, which shall be allow'd of by the Parish. And the Justices of Peace of the County or Place whither any such Vagrant shall be convey'd by Pass may at their Quarter-Sessions, to which such Pass is to be transmitted, enquire of the Default of any Officer, or other Person, of the Place to which such Vagrant shall be brought, in permitting or encouraging their Escape and Departure, and may punish the Offender; and if any Person shall again be found begging or misordering him or her self, any Justice of Peace may send such Person to the House of Correction to be kept to hard Labour till the next Quarter-Sessions; and if such Person do not then give Security for his good Behaviour for one Year, the Sessions may adjudge such Person to be a dangerous and incorrigible Rogue, and punish him accordingly. *Ibid.*

And if any Person apprehended shall appear by his own Confession, or the Oath of one Witness, to have obtain'd no legal Settlement since his Birth, and to have committed any of the Acts of Vagrancy as aforesaid, or to have us'd the Trade or Life of a common Beggar or Vagabond for two Years past, altho' he had formerly a Settlement, or to be a dangerous and incorrigible Rogue, within the Intent of this Act, such Justice of Peace instead of punishing or passing them away as aforesaid, may commit the Person so apprehended to the Custody and Power of him who procur'd such Apprehension, or on their Refusal, to any other Person, Body Politick or Corporate, willing to receive him as their Apprentice or Ser-

vant

vant for seven Years, and no longer: And those to whom such Vagrant shall be so committed may set them to work either in this Realm or in any *British* Plantation or Factory beyond Sea during the said seven Years, and no longer.

Ibid.

Provided any Person who shall think himself aggrieved Appeal to the by the Order of any Justice of Peace, may appeal to the Quarter-Sessions next Quarter-Sessions, whose Determination shall be final. ons.

Ibid.

And whereas many idle and disorderly Persons, blind, Beggars in lame, infirm, or pretending to be so, beg in Streets or Streets and Highways, to the Annoyance of Passengers, if any such Highways to Person shall be found begging in *England*, on Complaint be removed thereof made by two Inhabitants of the Parish or by the Constable to the Constable, or in his Absence to the Head Constable. rough or Tything-man, such Constable, or other Officer, shall cause such Beggars to be removed; and if they refuse to be removed, or shall offend a second time, the Refusal to re- Constable, or other Officer, shall strip them naked to the move, to whip Waste and cause them to be whipt till bloody. And if them. such Constable, or other Officer, shall neglect or refuse to cause the same to be done upon Oath thereof within 24 Hours by two Witnesses before a Justice of Peace, such Constable, or other Officer, shall forfeit 10 s. for every On pain of Offence to the Use of the Poor to be levied by Distress 10 s. and Sale. *Ibid.*

And if the Commander of any Ship or Vessel shall Captain of a bring into this Realm from *Ireland*, the *Isle of Man*, *Jersey*, Ship bringing *Guernsey*, or *Scilly*, or any foreign Plantation, any Rogue, a Beggar from Vagabond, or Beggar, or any likely to live by begging, *Ireland* or the being a Native of the said Islands or Plantations, and Plantations to such Persons shall be apprehended wandering and begging, forfeit 5 l, or misordering him or her self as aforesaid, such Commander shall forfeit 5 l. over and above the Charges any Constable, or other Officer, shall be put to in apprehending and re-conveying back the Person so brought over. And the Constable, or other Officer, where such Person shall be found begging, or misordering himself, may cause him or her to be apprehended and openly whipt, and afterwards put on Board any Vessel to be re-convey'd And such Beg- to the Place from whence they were brought, paying for gar to be re- their Passage such Rates as the Quarter-Sessions shall ap- convey'd be- point. And if such Constable, or other Officer, shall yond Sea, make appear upon Oath before a Justice of Peace what Expence he has been at, such Justice may by Order under his Hand and Seal direct the Payment of the same, as also the said Penalty of 5 l. and if the Commander of such Vessel shall not pay the same Monies upon Demand,

such Justice may by Warrant levy the same by Distress of the said Vessel or any of the Goods therein; and if the said Master or Vessel be remov'd out of the Jurisdiction of such Justice of Peace, the Order of the said Justice may be remov'd by *Certiorari* into the King's Bench, where the Judges may direct Process for arresting and detaining of the said Vessel until the Monies mention'd in such Order, with the Charges of executing such Process shall be satisfied; or otherwise to award Process for levying the same by *Capias fieri facias* or *Elegit* against the Master or Owners of the Vessel. *Ibid.*

Vessels oblig'd
to take him
on Board on
pain of 5 l.

And every Master of any Ship or Vessel bound for *Ireland*, the Isles of *Man*, *Jersey*, *Guernsey*, or *Scilly*, shall by Warrant from a Justice of Peace where such Ship or Vessel shall lie, take on Board such Vagrants as shall be nam'd in the said Warrant, and convey them to such Places in *Ireland*, &c. as such Ship or Vessel shall be bound to. And the Constable shall pay him such Rate *per Head* as the Quarter-Sessions shall from time to time appoint: and such Commander shall on the back of the said Warrant sign a Receipt for the Money, and for the Vagrants so brought him; which Warrant so indors'd being produc'd to the Justice, who sign'd the same, and allow'd by him under his Hand, the Money so paid shall be repaid by the County as Money for conveying Vagrants from County to County is hereby directed to be paid. And every Commander neglecting or refusing to receive or transport such Vagrant, or to indorse such Receipt, shall forfeit 5 l. to the Use of the Poor to be levied by Distress and Sale of the Vessel or any Goods therein by Warrant from any Justice of Peace. *Ibid.*

Constable, &c.
remiss in tak-
ing up Va-
grants, to for-
feit 20 s.

And if any Constable, or other Officer, shall fail of his Duty in apprehending, punishing, or conveying of Vagrants, or be otherwise remiss or negligent in his Duty; or if any Person shall hinder the Execution of this Act, or rescue any Person apprehended, or be aiding in their Escape, and shall be convicted thereof on the View of any Justice, or by the Oath of one Witness, the Offender shall forfeit 20 s. to the Use of the Poor to be levied by Distress and Sale by Warrant from one or more Justices of the Peace. *Ibid.*

8 Geo. c. 3.
Constables,
&c. to billet
Soldiers in
Publick-
Houses,

It shall be lawful for the Constables, Tything-men, Headboroughs, and other chief Officers and Magistrates of Cities, Towns, and Villages, and in their Default or Absence, any one Justice of Peace inhabiting in the Neighbourhood, and for no others, to quarter and billet Officers and Soldiers in Inns, Livery-Stables, Ale-Houses, Victualling-Houses, and all Houses of Persons selling

Brandy,

Brandy, Strong Waters, Cider, or Metheglin, by Retail, to be drank in Houses, except the Houses of Distillers, who keep Houses or Places of distilling Brandy or Strong Waters, and the Houses of Shop-keepers, whose principal Dealings are more in other Goods, than in Brandy and Strong Waters, who do not suffer Tipling in their Houses, and no other, and in no private Houses whatsoever; nor shall more Billets be order'd, than there are Soldiers present to be quarter'd; and if any Constable, &c. shall quarter any such Officer in any private House, without the Consent of the Owner, he shall have his Remedy at Private Law against such Constable or Magistrate, for the Damage he shall sustain thereby. *Stat. 8 Geo. cap. 3.*

And if any Military Officer shall quarter Soldiers otherwise than is allow'd by this Act, or shall offer any Menace or Compulsion, to any Mayors, Constables, or other Civil Officers aforesaid, tending to deter or discourage them from any part of their Duty hereby requir'd, such Military Officer being thereof convicted by the Oath of two Witnesses, before any two or more of the next Justices of Peace, shall be deem'd to be *ipso facto* cashier'd, and be disabled to hold any Military Employment in his Majesty's Service. *Ibid.*

Provided the said Conviction be affirmed at the next Quarter Sessions, and a Certificate thereof transmitted to the Judge Advocate, who shall certify the same to the next Court Martial. *Ibid.*

And in case any Person shall find himself aggriev'd, in that such Constable, &c. has quarter'd in his House a greater Number of Soldiers than he ought to bear in Proportion to his Neighbours, and shall complain to a Justice of Peace thereof, such Justice shall have Power to relieve him, by ordering so many Soldiers to be remov'd and quarter'd upon such other Person as he shall see cause. *Ibid.*

And it shall be lawful for the High Constable, Petty Constables of Constables, Headboroughs and Tythingmen, in the City of Westminster, and Places adjacent, when lawfully required, to quarter the Officers and Soldiers of the Foot Guards, in such Houses only in the said City, &c. as are there limited by this Act.

And all Justices of Peace in their several Precincts, being required thereto from his Majesty, or the General of his Forces, or the Master General, or Lieutenant General of the Ordnance, shall as often as such Order is brought unto one or more of them, by the Officer of the Regiment or Detachment so order'd to march, issue out Warrants to the Constables or Petty Constables, of the Division,

Division, Riding, City or Liberty, from through near, or to which such Regiment or Detachment shall be order'd to march, requiring them to make such Provision of Carriages, with able Men to drive them, as is mentioned in the said Warrant, allowing sufficient time, so that the neighbouring Parts be not always burden'd: And the Officer who by virtue of such Warrant is to demand such Carriages of the Constables, shall pay down in Hand to the said Constable, for the Use of the Person providing such Carriages, one Shilling for every Mile, any

Waggon with five Horses shall travail; one Shilling for every Mile any Wain with six Oxen or four Oxen with two Horses shall travail; and nine Pence for every Mile any Cart with four Horses shall travail; and proportionably for less Carriages. And such Constable or Petty Constable, shall appoint such Persons having Carriages within their respective Liberties, as they shall think proper, to provide Carriages and Men according to the Warrant aforesaid; and if any Military Officer for whose Troop or Company the Carriage was provided, shall force such Carriage to travel more than one Days Journey, or shall not discharge the same in due time for their or Horses, or return Home, or shall suffer his Soldiers or Servants, except the Sick, or any Woman to ride thereon, or shall force any Constable by Threatnings, to provide Saddle Horse for themselves or Servants, or shall force Horses from the Owners, he shall for every such Offence, forfeit five Pounds, Proof being made thereof before two Justices of Peace, who are to certify the same to the Paymaster of the Forces, who is required to pay the said Sum according to the Appointment under the Hands and Seals of the said Justices of Peace. *Ibid.*

Officers for-
cing Carriages
or Horses, or
suffering Sol-
diers or Wo-
men to ride,
to forfeit 5*l.*

Constable, &c. And if any High Constable or Petty Constable, shall not providing wilfully neglect or refuse to execute such Warrants, directed to them to provide Carriages or if any Person appointed by such Constable or Petty Constable, to furnish any Carriage or Man, shall neglect to provide the same; or if any other Person shall wilfully do any thing to hinder the Execution of the said Warrants, every such Offender shall forfeit a Sum not exceeding forty Shillings, or less than twenty, to the Use of the Poor where the Offence is committed: And such Offences shall be heard and determined by two Justices of Peace near the Place, who are empowered to cause the said Penalty to be levied by Distress and Sale. *Ibid.*

Constables to
be reimburs'd
by the Trea- And the Treasurer of every County, shall pay unto such Constables as have provided Carriages as aforesaid, all such reasonable Sums as shall have been paid by them for

for the same, over and above what was paid by the Officer of the County, requiring such Carriages, out of the Publick Stock County, of the County, according to such Rates, Orders, or Rules, as the Justices of Peace in their Quarter Sessions shall direct or appoint; Regard being had to the Season of the Year, and the Length and Condition of the Ways through which such Carriages are to travail. *Ibid.*

And in case the Publick Stock of the County or Riding How the Mob be not sufficient to satisfy the said extraordinary Charge, they shall be the Justices in their Quarter Sessions are empowered to raise by the raise Monies upon the respective Counties or Ridings, as County. they now raise Monies for County Goals and Bridges, to satisfy the same. *Ibid.*

Provided no Carriage impressed by this Act, shall be obliged to carry above twenty Hundred Weight. *Ibid.* Carriages to carry but 20

And the Carriages for the Forces quarter'd in Scotland, Hundred shall be provided according to the Laws in Force there at Weight. the time of the Union. *Ibid.* Scotland.

And if any Officer, Civil or Military, by this Act authorized to quarter Soldiers, shall quarter any of the quartering Wives, Children, or Maid Servants, of any Officer or Soldiers, Soldier, in any House, against the Consent of the Owner, Wives, &c. the Offender if Officer or Soldier. shall upon Complaint made to the Commander in Chief of the Army, or to the Judge Advocate, be *ipso facto* cashier'd, and if a Constable or other Civil Officer, shall forfeit twenty Shillings to the Party griev'd, upon Proof thereof before the next Justice of Peace, to be levied by Distress and Sale. *Ibid.*

And if any High Constable, Constable, Beadle, or other Officer or Person whatsoever, who by virtue of this Constable, Act shall be employ'd in quartering or billeting any Officers or Soldiers, shall receive, demand, contract, or agree, a Bribe to excuse the quartering any Person from quartering or receiving into his House any such Officer or Soldier, or if any Victualler shall refuse to receive any Officer or Soldier, so quarter'd or billeted upon him as aforesaid, and shall be convicted thereof before any Justice of Peace of the County or Place, by the Oath of one Witness, or his own Confession, And of refusing to quarter, such Offender shall forfeit a Sum not exceeding five Pounds, or under forty Shillings, as the Justice shall think fit; to be levied by Distress and Sale, and to be paid to the Overseers of the Poor where the Offence shall be committed, for the Use of the Poor there. *Ibid.*

And it shall be lawful for any Justice of Peace by War-Justice may require, to require any High Constable, Constable, Beadle, require an Account or other Officer, who shall quarter or billet Soldiers, in count of the pursuance of this Act, to give unto the said Justices an Account of

the Soldiers
billeted.

Account in Writing, of the Number of Officers and Soldiers quarter'd by them, with the Names of the Persons with whom quarter'd, and the Place where they dwell, to the end the said Justices of Peace may be the better enabled to prevent all Abuses in the quartering of Soldiers. *Ibid.*

READINGS.

Constables are either High Constables or Petty Constables.

Constables,
their Antiqui-
ty.

The High Constable it is said, in the Queen against *Wyat.* 2 *Anna, B. R.* was an Officer at Common Law, before the Statute of *Winton*, as well as the Petty Constable, and may arrest for a Breach of the Peace as well as a Petty Constable. *Salk.* 175, 381. But *Quere*, and see the Authorities hereafter cited to the contrary.

To be chosen
in the Leet.

Of common Right, a Constable is to be chosen by the Jury in the Leet, and if he be present and refuse to be sworn, the Steward may fine him; if he be absent he shall be sworn before the Justices of Peace, who still administer the Oath to him, as Conservators of the Peace at Common Law; if such Constable refuse to be sworn the Homage, must present his Refusal at the next Court, and then he shall be amerced, but he cannot be distrein'd for the Penalty without express Custom. *Salk.* 175.

High Constable now appointed by the Sessions.
His Duty.

The High Constable is now usually appointed and sworn by the Justices of Peace at their Quarter Sessions, and he has the Direction of the Petty Constables, Headboroughs, and Tythingmen within his Hundred. His Duty is to keep the Peace, and apprehend Felons, to make Hue and Cry, and to take care that the Watch be duly kept in his Hundred, and that the Statutes for punishing Rogues and Vagrants, be put in Execution. He ought to present unlawful Games, Tipling, Drunkenness, Bloodshed, Affrays, and *Popish* Recusants, within his Liberty. He is to execute Precepts and Warrants, directed to him by Justices of Peace, and make Returns to the Sessions, or the Monthly Meetings of Justices,

all the Articles contain'd in his Oath, or that concern his Office. And he is also to cause the Petty Constables to make their Returns. He is also to return all Victuallers and Alehouse Keepers that are unlicens'd, and all such Persons as entertain Inmates, who are likely to be a Charge to the Parish. He is also to present the Faults of Petty Constables, Headboroughs, &c. who neglect to apprehend Rogues, Vagrants, and idle Persons, Whores, Night Walkers, Mothers of Bastards, who are likely to be chargeable to the Parish, and those who refuse to take poor Apprentices, and also all Defects of Highways and Bridges, and the Names of those who ought to repair them, Scavengers who neglect their Duty, and all common Nuisances in Streets and Highways, Bakers who sell light Bread, Brewers who sell Beer to unlicens'd Alehouses, Forestallers, Regrators, Ingrossers, &c. And at every Quarter Sessions they are to pay to the Treasurer of the County, all such Monies as have been levied and receiv'd by them, of the Church Wardens, &c. for the Relief of Prisons, Hospitals, &c.

High Constables chosen by the Justices of Peace, may for just Cause be removed by them. *Mich. 9 Jac. 1. Buls. 104.* And it is said, They were not *ab Origine*, but came in with Justices of Peace, *1 Mod. 13. per Twisden.*----- They were created by the *13 Ed. 1.* and their Duty thereby limited, tho' subsequent Statutes have enlarged their Power, but being created by Act of Parliament, they have no more Authority than the Act that created them, or some subsequent Act hath given them, and cannot prescribe as an Officer by the Common Law may. *4 Inst. 267. 2 Danv. 148. Cro. Eliz. 376.* But Mr. *Hawkins* citing the abovesaid Case of the Queen against *Wyat. 1 Salk. 175, 381.* says, it seems to be the better Opinion, that both High Constables and Petty Constables were by the Common Law, and not first constituted by the Statute of *Winchester, cap. 6.* for that the Statute doth not say that there shall be such Officers constituted, but seems to suppose

High Constables may be displac'd by the Justices.

Said to be created by Statute.

Better Opinion that both High and Petty Constables were Officers at Common Law.

suppose that there were such before the making that Act. 2 *Hawk.* 61.

Petty Constables chosen usually by Parishioners.

Petty Constables are said by Mr. *Lambert*, to be Conservators of the Peace, in their several Towns, Tythings, and Boroughs, and have much the same Authority as the High Constable of the Hundred hath in his Hundred; the chusing and swearing them properly belongs to the Court Leet. *Co. 8 Rep.* 38, 41. but they are generally chosen by the Parishioners, and sworn by a Justice of Peace, who upon just Cause, may remove him: And such Constable ought to be chosen every Year, but he must execute the Office until another is appointed or he is legally discharged. *Dalt. cap.* 28.

Both appointed in the Sheriff's Tourn anciently.

Anciently both the High Constables and Petty Constables were appointed by the Sheriff in his Tourn, and were sworn there, as it seems they may still according to Mr. *Dalton*, as well as in the Leet. *Dalt. cap.* 28. S. 5.

Pain of refusing the Office.

A Constable lawfully chosen, and refusing to be sworn, the Justices of Peace may bind him over to the Assizes or Sessions, where he may be indicted, fined, and imprison'd, for his Contempt. *Ibid.*

Constable to execute Justices Warrants, or indictable.

The Constable is the proper Officer to a Justice of Peace, and bound to execute his Warrants, and therefore where a Statute authorizes a Justice of Peace to convict a Man of a Crime, and to levy the Penalty by Distress, without saying to whom such Warrant shall be directed, the Constable is the proper Officer to execute such Warrant, and may be indicted if he doth not obey it. 5 *Mod.* 130. *Salk.* 381.

A Constable by the Common Law might arrest Felons, and all suspicious Persons that go abroad by Night and sleep by Day, and resort to Bawdy Houses, or keep suspicious Company, and may carry them before a Justice of Peace, to find Sureties for their good Behaviour, and command his Neighbours to aid and assist him. *Lambert's Duty of Constables*, 12. And he ought to present all Offences inquirable in the Tourn or Leet.

He

He may appoint a Deputy to execute a War- When he may
rant, when by reason of Sickness, Absence, or ^{appoint a De-}
otherwise, he cannot do it himself. *Siderf. 355.* puty.
Dalt. cap. 28.

If a Justice of Peace make a general Warrant
to bring a Man before him, or any other Justice
of Peace, it is not in the Choice of the Delin-
quent, but of the Constable, before what Justice
he will carry him; but a Justice of Peace may
make a Warrant to bring an Offender before
himself, and it is good. *Dalt. cap. 28. 5 Cok. 59.*
Foster's Case.

He may without a Warrant commit any to What he may
the Stocks, that make an Affray or Assault, or do of his own
threaten to beat or wound, or who are about to Authority.
break the Peace in his Presence, until he can get
Assistance to carry the Offender before a Justice
of Peace, but if the Affray be over, he cannot car-
ry the Offender before a Justice of Peace without
a Warrant. *Dalt. cap. 1. Sec. 7.*

If the Affray be in a House, the Constable may
break into it, to see the Peace kept, and where
the Offender flies into another County, he may
make fresh Pursuit, and take him there. *Lamb.*
125. Dalt. c. 8. S. 5.

If the Constable be assaulted, he may not only
defend himself, but justify the beating or appreh-
ending such Person.

If a Warrant be made to a Constable to bring General War-
one before a Justice of Peace, to answer all such rant will not
Matters as shall be objected against him by *A.* justify a Con-
and doth not set forth the special Matter in the stable.
Warrant, such Warrant is unlawful, and the
Constable is liable to an Action of false Impri-
sonment if he executes it. *2 Inst. 591. 10 Rep. 76.*

As the Constable is a sworn Officer, he need Need not
not shew his Warrant, and it is said, he may ju- show his War-
stify detaining an Offender for a Day, without a rant.
Warrant.

Where *J. S.* laid a Child of two Months old Where he may
in the Church Yard of *B.* to the Intent to destroy detain one
it, or charge the Parish with it, it was held, that without War-
the Constable of *B.* might arrest *J. S.* and put rant.
him

him in the Stocks, that it was a good Cause to stop and imprison him. *Mich.* 34 & 35 *Eliz.* *Beal* and *Carter*. *Cro. Eliz.* 287. But where *A.* as a Trespasser takes the Corn of *B.* the Constable upon the Request of *B.* cannot detain *A.* till *B.* procure a Warrant from a Justice of Peace, &c. for the Constable had no Power to stop any Man, unless for Felony. *Mich.* 11 *Jac.* between *Ringhall* and *Walsh*. 1 *Brown* 298. 2 *Danv.* 149.

Attorney, &c.
exempted
from this Of-
fice.

If an Attorney or any Officer of the Courts of *Westminster*, be chosen Constable, he may have his Writ of Privilege to discharge him. *Noy.* 112, 113. And even where they are chosen by a particular Custom in respect of their Estates. 1 *Lev.* 265. So Barristers at Law and the Servants of Parliament Men, are held to be exempted from serving this Office, but Physicians are not. 1 *Mod.* 13, 22. And it has been held, that an Alderman of *London* is not compellable to serve, but a Captain of the King's Guards shall not claim this Privilege. 1 *Lev.* 233.

Persons of
Quality or
Physicians not
exempted.

But if an Officer or Gentleman of Quality, or a practising Physician, be chosen Constable of a Town, which has sufficient Persons besides, to execute this Office, and no special Custom concerning it, it is said, that such Persons may perhaps be relieved by the Court of *King's Bench*. 2 *Hawk.* 63. But even a Custom cannot exempt fitting Persons from serving, where there are not sufficient Persons besides. 1 *Siderf.* 272.

Headborough
&c. the same
Duty as the
Constables.

There are other Officers whose Duty is much the same with Constables, as Headboroughs, Tythingmen, Borsholders in *Kent*, and the third Borough in *Warwickshire*; of these the Petty Constable seems to be the principal Officer, but in his Absence, or where there is no Petty Constable, their Duty is the same, and any of them for neglecting their Duty, may be indicted and fin'd by the Justices of Peace.

Where Con-
stable may ex-
ecute a War-
rant out of
his own Pre-

If a Warrant be directed to a Constable (or other Officer) by Name, commanding him to execute it, tho' he is not compellable to go out of his own Precinct, yet he may if he will, and shall

shall be justified by the Warrant for so doing; cinct, and but if the Warrant be directed to all Constables, where not. &c. generally it shall be taken respectively, and no Constable can execute the same out of his Precinct. *Trin. 11 W. 3. B. R. Salk. 176.*

See *Justices of Peace, Vagrants.*

Conventicles, See Papists, Recusants.

Convocation, See Bishops.

Coopers.

No Brewer shall by himself or any other exercise the 23 H. 8. c. 4. Mystery or Craft of a Cooper, or make any Barrels or No Brewer to other Vessel to put their Beer or Ale to Sale in, but such be a Cooper. Vessel shall be made by the common Coopers. *Stat. 23 H. 8. cap. 4.*

And Coopers shall make the said Vessels of good and Contents of seasonable Wood, and put their proper Mark upon them, brewing Vessels and every Barrel for Beer shall contain 36 Gallons, Kilderkin 18, and a Firkin 9 Gallons; every Barrel for Ale shall contain 32 Gallons, a Kilderkin 16, and a Firkin 8 Gallons. And no Cooper shall make any Vessel of any greater or lesser Content unless he mark the Number of Gallons it contains thereupon. And no Brewer shall put Beer or Ale to Sale in any other Barrels or Vessels of Wood other than shall be made and mark'd by Coopers as abovesaid, and every Barrel, Kilderkin, and Firkin, for Beer or Ale shall be of the Contents aforesaid. *Ibid.*

And all Soap-Makers shall put their Soap to Sale in Of Soap Vessels of the following Contents, viz. every empty Barrel to contain 32 Gallons, and to weigh 26 Pounds; every half Barrel to weigh 13 Pound, and contain 16 Gallons; every Firkin 6 Pounds and an half; on pain of forfeiting for every Vessel otherwise made 3 s. 4 d.

And the Wardens of the Mystery of Coopers in London Contents of are hereby impower'd, taking with them an Officer of the Vessels to be Mayor's, to search, view, and gauge all such Barrels and mark'd by the other Vessels made for Ale, Beer, and Soap, to be put to Warden of the Sale in London, and the Suburbs, and within two Miles Company, thereof, and to see that the same Barrels, &c. be made and mark'd, and bear their true Contents according to this Statute, and also to mark every such Barrel, &c. containing their true Contents with St. Anthony's Cross: And the said Wardens shall have a Farthing for evrry Vessel

Vessel so mark'd of the Owner and Maker thereof. And if any Vessels shall not bear their true Contents they may seize and retain the same, and cause them to be truly mark'd and amended, or burnt, and the Owner shall forfeit for every such defective Vessel 12 *d.* one Moiety to the Crown, and the other to the Prosecutor, to be recover'd in the King's Courts. *Ibid.*

Or head Officer of the Place.

And in Towns where no such Wardens of Coopers be, the Mayors and other head Officers are vested with the same Powers to search, view, and gauge all Barrels, &c. as the said Wardens are in *London*. *Ibid.*

Brewers may keep Coopers.

Provided that every Beer Brewer may keep two Coopers in his House, and every Ale Brewer one to amend their Vessels. *Ibid.*

And none shall diminish any such Barrel, &c. by taking out the Head or any Staff thereof on pain of 3 *s.* 4 *d.* one Moiety to the Crown, and the other to the Prosecutor, and the Offender to be punish'd at the Discretion of the head Officer before whom presented, and such Vessel shall be burnt. *Ibid.*

Contents of Ale Vessels.

And Coopers shall make their Ale Vessels according to the Assize specified in the Treatise call'd *Compositio Mensurarum*, viz. every Ale Barrel to contain 32 Gallons of the said Assize, of which 8 Gallons make the common Bushel, and every Kilderkin and Firkin proportionably on pain of 3 *s.* 4 *d.* for every Vessel otherwise made, to be dispos'd and recover'd as aforesaid. *Ibid.*

Cooper to mark his Vessels.

And every Cooper shall set his own Mark on his Vessels on pain of 3 *s.* 4 *d.* but no Searcher for the gauging Vessels shall empty them of the Ale, whereby the same may be damaged. And every Ale Brewer may carry out his Ale to the King's Palaces or Houses, or to those of any of the Nobility, in Tuns, Butts, Pipes, Hogsheds, or other Vessels of larger Dimensions than express'd in this Act. *Ibid.*

8 Eliz. c. 9.
Prices to be set upon Vessels.

All Barrels, Kilderkins, Firkins, and other Vessels for Ale, Beer, or Soap, to be utter'd therein, shall have the Prices set on them by the head Officers in Towns Corporate, and out of such Towns, by the Justices in their Quarter-Sessions after *Easter* yearly. And every Cooper not selling his Vessels at the Prizes so rated, shall forfeit for every Vessel sold at a greater Price 3 *s.* 4 *d.* to be dispos'd and recover'd as aforesaid. *Stat. 8 Eliz. c. 9.*

Copyhold.

Copyholders shall enjoy their Estates where the King 2 Ed. 6. c. 8. is intituled to them by Office or Inquisition in such Office found manner as they might have done if there had been no not to affect such Office or Inquisition found. Stat. 2 Ed. 6. c. 8. Copyhold.

Copyhold Lands are made subject to Statutes of Bank-rupt, and the Vendees of such Copyhold Lands shall compound for their Fines, and be admitted, and do their subject to Statute of Bank-rupt. Statutes of Bank-rupt. 13 Eliz. c. 7.

A Popish Recusant Convict shall forfeit all his Copyhold Lands during his Life to the Lord of the Manor if such Lord be not then a Popish Recusant and convicted of not coming to Church to hear Divine Service, or seiz'd or possess'd in Trust to the Use of such Recusant, and in such Case the same shall go to the Crown. Stat. 35 Eliz. c. 2.

The Estates of the King's Copyhold Tenants confirm'd by Decree in the Exchequer or Dutchy Chamber shall be good according to such Decrees, saving the Right of holders. Stat. 7 Jac. c. 21.

READINGS.

Copyholders are so call'd from their holding by Copy of Court Roll, which is the only Evidence they have of their Estates. *Bracton* files them *Villanos Sockmanos*, because they hold by base Tenure, viz. by doing of Villains, Services. *Littleton* says, Tenant by Copy of Court-Roll; is where there is a Manor, in which time out of mind Tenants have used to hold Lands and Tenements to them and their Heirs in Fee-Simple, or Fee-Tail, or for Term of Life, according to the Custom of the Manor, originally they were but bar Tenants at Will, but they are now establish'd by Custom; and such Tenant so long as he doth his Services, and does not break the Custom of the Mannorly. cannot be ejected by the Lord. 4 Co. 21, 22. And his Estate shall descend according to the Rules and Maxims of the Common Law, but such customary Inheritances shall not be Affers

to charge the Heir in an Action of Debt.
4 Co. 22.

Lord Tenant
for Years, &c.
may grant
Copies to bind
the Inheri-
tance.

The Lord that hath a lawful Estate in the Manor, whether he be Tenant for Life or Years, Tenant by Statute Merchant, Staple, or *Elegit*, or Tenant at Will, may grant Copies according to Custom, and such Grants shall bind those in Remainder, and such Grants by an Infant *Non Compos*, &c. shall be binding. *Co. Lit.* 58. 4 Co. 23. 8 Co. 63. And the Rents and Services reserv'd by them shall be annex'd to the Manor, and attend the Owner thereof, after their particular Estates determined. 11 Co. 18. But he that has but a particular Estate in the Manor cannot grant a Copyhold by Parcels, or demise Part, and retain the Residue himself, and he must reserve the ancient Rent or more. *Bro. Tenant by Copy* 27.

Tenant at
Sufferance
cannot.

Disseisors, Abators, Intruders, or Tenants at Sufferance, cannot grant Copies to bind those that have a Right. *Co. Lit.* 58.

What may be
granted by
Copy.

A Manor may be granted by Copy-Underwoods without the Soil, may be granted by Copy to one and to his Heirs, and so may the Herbage or Vesture of Land, and generally all Lands and Tenements within the Manor, and whatsoever concerneth Lands or Tenements may be granted by Copy as a Fair appendant to a Manor, &c.

Guardian
may grant
Copies,

If Guardian in Socage grants a Copyhold in Reversion according to the Custom of the Manor, this shall be a good Grant, and bind the Ward, tho' it comes not in Possession during the Nonage of the Ward, for he is *Dominus pro Tempore*. 2 Roll. Abr. 41. Cro. Jac. 55, 98.

And Execu-
tors if ap-
pointed.

If a Lord by his Will devises that his Executor shall grant Copies according to the Custom of the Manor for the Payment of his Debts, the Executor may make Grants according to the Custom, tho' he hath nothing in the Manor. *Co. Lit.* 58.

If Baron and Feme seiz'd of a Mannor in Right of the Feme grant a Copyhold, this shall bind the Feme notwithstanding her Coverture. Grants by Baron and Feme.

4 Co. 23. Cro. Jac. 59. B. A Grant of a Copyhold by a Bishop, Prebend, Parson, shall bind By Bishop. for ever. 4 Co. 23. B. 8 Co. 63.

The Lord of a Manor may himself grant a Copyhold at any Place out of the Manor, but the Steward cannot grant a Copyhold at a Court held out of the Manor. 4 Co. 26. between *Melwich* and *Luter*. But it is otherwise where by Custom the Court hath been held out of the Manor, as where a Lord seiz'd of three Manors hath time out of mind within one of his Manors kept Courts for all his said Manors. Co. Lit. 58. Lord may grant Copies out of the Manor, but Steward cannot.

The Steward may take Surrenders out of the Manor as well as the Lord. Trin. 1 W. & M. C. B. *Dudfield v. Andrews*. Salk. 184. 2 Danv. 181. But Steward may take Surrenders out of the Manor.

Where there is Baron and Feme Copyholders to them and the Heirs of the Baron, and the Baron dies, the Heir of the Baron may surrender his Reversion before Admittance, and during the Life of the Feme; and if a Surrender be to one for Life, Remainder in Fee, and the Tenant for Life is admitted, that is an Admittance for him in Remainder. Cro. Eliz. 662. Reversion surrendered.

And the Heir before Admittance may enter into Copyhold Lands descended to him, and surrender them to the Use of another, but this shall not prejudice the Lord of his Fine due to him upon the Descent. Cro. Jac. 36. The Heir before Admittance may surrender.

If *A.* surrenders his Copyhold Lands to the Use of *B.* and afterwards surrenders the same Lands to the Use of *C.* and at the next Court the Surrender to *C.* is presented, but the Surrender to *B.* is not in this Case, *C.* shall have the Land; for notwithstanding the Surrender to the Use of *B.* nothing pass'd out of the Copyholder till it was presented at the next Court. Cro. Car. 199. Where there are two surrenders, the first that is presented is to be preferred. But the first Surrender is

Surrendree
cannot surren-
der before Ad-
mittance.

Surrender
may be by
Attorney in
Court.

Surrender in
Ireland to De-
puty Steward
good.

To the
Steward to
the Use of
the Steward
good.
Surrender by
Attorney.

Surrender
upon Condi-
tion.

If Surrendror
or Surrendree
die before the
Surrender is
presented, yet

to be preferred to a second, where they are both presented at the next Court. 2 *Danv.* 180.

Where a Copyholder surrenders to the Use of another in Fee, the Surrendree cannot surrender to the Use of a third Person before Admittance. *Mich.* 6 *Jac.* between *Wilson* and *Wedhall.* *Yelv.* 144.

A Copyholder may surrender in Court by Letter of Attorney without any particular Custom for it. 9 *Co.* 75. But he cannot surrender out of Court to two Tenants by an Attorney. 9 *Co.* 76.

A Copyholder being in *Ireland*, the Steward of a Manor here made a Commission to one to receive a Surrender from him there, and it was held good. 2 *Danv.* 181. And a Surrender made to a Steward to the Use of the Steward himself is good, for the Entry is *quod sursum reddidit in Manus Domini*, and the Steward is but the Lord's Servant. *Cro. Eliz.* 717.

Where a Letter of Attorney is made to two to make a Surrender in Court, the Attorneys ought to pursue the Form and Manner of the Surrender in all Points according to the Custom as the Copyholder himself ought to have done, and they ought to make it in the Name of him who gave them their Authority. 9 *Co.* 76. *Comb's Case.*

Where a Copyholder surrenders upon Condition, and this is presented absolutely, the Presentment is void. 4 *Co.* 25.

A Copyholder may surrender to the Use of another, reserving Rent with a Condition of Re-entry for Non-Payment, and in Default of Payment may re-enter. 4 *Co.* 21.

Where a Feme Copyholder takes a Husband, has Issue, and dies, the Baron shall not be Tenant by the Courtesy without a special Custom. 4 *Co.* 22.

Where a Copyholder in Fee surrenders out of Court, and dies before it is presented, yet the Surrender stands good, and if it be presented at the next Court *Cestui que Use* shall be.

be admitted; so if *Cestui que Use* dies before it is good if it is presented, his Heir may be admitted, but presented at if it be not presented at the next Court, the next Court. Surrender is void. *Co. Lit. 62.*

Where the Tenants by whose Hands the Surrender was made shall die, and this upon Proof is presented, this is well enough. *4 Co. 29.* So if Tenants who took the Surrender die.

If two Jointenants be of Copyhold Lands Surrender by in Fee, and the one out of Court according to Jointenant fe- the Custom surrenders his Part into the Lord's vers the Join- Hands to the Use of his last Will, and by his ture. Will devis'd his Part to a Stranger in Fee, and dieth, and at the next Court the Surrender is presented, by the Surrender and Presentment the Jointure was sever'd, and the Devisee ought to be admitted to the Moiety of the Lands, for now by Relation the State of the Land was bound by the Surrender. *Co. Lit. 59.*

Where a conditional Surrender is presented, Mis-entry and the Steward omits the entring the Con- may be made dition, upon sufficient Proof thereof the Sur- good. render shall not be avoided, but the Rolls shall be amended. *4 Co. 25.* Nor shall the Mis-entry of the Date of the Court prejudice the Copyholder, but he may give in Evidence the Truth, and shall not be bound by the Rolls. *1 Leon. 299.*

Where a Custom is that the Wife of every Wife's free Copyholder for Life shall have her free Bench Bench. after the Death of the Baron, the Law casts the Estate upon the Wife, so that she shall have it before Admittance, and may make a Lease for a Year, as any other Copyholder may. *2 Danv. 184. Hob. 181.*

Where Copyhold Lands descend to the Son within Age, and the Custody of the Land is committed to his Mother by the Lord during his Nonage, who enters, and afterwards the Son dies before Admittance, this Possession of the Mother as Guardian gives the actual Possession to the Son, and therefore his Sister of the half Blood cannot be Heir to him. *2 Danv. 185. 1 Mod. 102, 120.*

Surrender to a Lord who has a particular Estate which determines before Admittance. The next Lord shall admit.

If the Lord of the Manor for the Time being be Lessee for Life or for Years, Guardian, or any that hath any particular Interest, or Tenant at Will of a Manor, (all which are accounted by Law *Domini pro tempore*) do take a Surrender into his Hands, and before Admittance the Lessee for Life dieth, or the Years Interest or Custody do end or determine, or the Will is determin'd, though the Lord cometh in above the Lease for Life or for Years, the Custody, or other particular Interest, or Tenancy at Will, yet shall he be compell'd to make Admittance according to the Surrender, and so was it holden in 17 *Eliz.* in the Earl of *Arundel's Case.* *Co. Lit.* 59.

Baron commits Waste, the Feme forfeits her Estate.

Where Feme Tenant for Life takes a Husband, who commits Waste contrary to the Custom of the Manor, and dies, the Estate of the Feme is forfeited by the Act of the Husband; but if a Stranger commit the Waste without the Assent of the Husband, this is no Forfeiture. *4 Co. 27.*

Fines must be reasonable.

Where the Fines of the Copyholders of the Manors are uncertain, yet the Lord cannot exact excessive and unreasonable Fines, and if he does, the Copyholder may by Law deny the Payment of them without any Forfeiture, and this shall be determin'd by the Opinion of the Justices before whom the Matter depends, or upon a Demurrer, or on Evidence to a Jury upon the Confession or Proof of the annual Value of the Land, whether the Fines were reasonable or not. *4 Co. 27.*

And reasonable Time given to pay them.

If the Lord in case of uncertain Fines assess a reasonable Fine, and require the Copyholder to pay it, he shall have a reasonable Time given him. *4 Co. 27.*

No Fine due till Admittance.

No Fine is due to the Lord upon a Surrender or a Descent until Admittance. *4 Co. 28.*

Lease from the Lord determines the Copyhold,

If a Copyholder in Fee accepts of a Lease for Years of the same Land from the Lord, this determines his Copyhold Estate. *2 Co. 16, 17.*

Where

Where a Copyholder for Life had Common in the Lord's Wastes, and the Lord granted and confirm'd his Copyhold Lands, with the Appurtenances, it was resolv'd by the Court that he should lose his Common. *Trin. 7 Jac.*

Marshall v. Hunter. Cro. Jac. 253.

A Lord at Will of a Copyhold Manor can not license a Copyhold Tenant to make a Lease for Years, tho' he may grant a Copyhold for Life according to the Custom; and if a Lord for Life licenses a Tenant to make a Lease for Years, such Lease shall not continue longer than the Life of the Lord. *2 Danv. 202.*

If by the Custom a Copyhold may be granted for three Lives, and it is granted to one for his Life, Remainder to such Woman as he shall marry, and to the first Son of his Body, both these Remainders are void, but the Estate for his own Life is good. *Mich. 44 & 45 Eliz. between Webster and Allin. Moor 677. Pl. 922. adjudged. 2 Danv. 203.*

If by Custom it is demisable in Fee or for Life *solumodo ea capienti extra Manus Domini*, yet a Surrender may be to the Use of one for Life, Remainder in Tail, Remainder in Fee. *Cro. Eliz. 373.*

If the Limitation of the Use in a Surrender be general, then *Cestui que* Use taketh but an Estate for Life, for the Estates of Copyholders shall be directed by the Rules of Law unless there be a special Custom in the Manor to the contrary. *4 Co. 29.*

Where no Use is limited upon a Surrender, nothing passes to the Lord, and if a Copyholder surrenders to the Use of his Will, the Fee continues in him, and not in the Lord. *4 Co. 23. Cro. Eliz. 441.*

If a Copyholder surrenders *habend' a Tempore Mortis* of the Copyholder to the Use of another and his Heirs, this is void, for a Surrender can no more commence at a Day to come than a Livery. *Hill. 2 Jac. Simpson v. Southern. Cro. Jac. 376.*

Copyholder Tho' a Copyholder cannot alien by Deed, may by Deed yet he that hath a Right only to a Copyhold release a may release it by Deed or Copy to one that Right. is admitted Tenant *de Facto*. 2 *Danv.* 205.

Or a Condi- If a Copyholder surrenders upon Condition, tion. he may afterwards release the Condition by Deed. *Trin.* 2 *Jac.* *Hull v. Sharbrook.* *Cro. Jac.* 36.

Jointure may If there be two Joint-Copyholders, and one of be released by them releases to the other, this is good with- one Jointe- out any Surrender or Admittance. *Hill.* 16 *Jac.* nant to the between *Wase* and *Pretty.* 2 *Danv.* 205.

Copyholder If a Copyholder bargains and sells his Copy- may sell to hold to a Lessee for Years of the Manor, his the Lord by Copyhold is thereby extinguish'd, for between Deed. the Lord and Tenant the Conveyance need not be according to Custom, and the Tenant's Estate may be determin'd by any Act that shews it to be his Will to hold no longer by Copy. 2 *Danv.* 205.

Fines assēs'd If a Copyholder hath several Lands held by severally. several Services, the Lord ought to assēs the Fines severally for every Parcel so severally held, for the Tenant may refuse to pay the Fine for one Parcel, and forfeit that, and pay the Fines for the rest. 4 *Co.* 28.

Time and If the Lord will take Advantage of the For- Place must be feiture of a Copyhold for Non Payment of the ascertain'd for Fine, he must set a certain Time and Place for Payment of the same. *Cro. Jac.* 617. But it is otherwise in case of a Fine certain. 4 *Co.* 21.

Admission If he that is *Dominus pro Tempore* of the purges all For- Manor admits one to a Copyhold, he thereby seitures. dispenses with all precedent Forfeitures, not only as to himself, but also as to him in Reversion; for such new Grant and Admittance amounts to an Entry for the Forfeiture and a new Grant; but a Lord by Tort or by Disseisin cannot by such Admittance purge the Forfeiture as to the rightful Lord, 1 *Lev.* 26.

One cannot devise a Copyhold by his Will, but he may make a Surrender to the Use of his last Will, and by his Will declare his Intent.

Two Tenants cannot take a Surrender of a Feme Covert out of Court unless by special Custom, because she must be secretly examin'd by the Steward whether she makes the Surrender willingly, or without Compulsion by her Husband.

She who hath a Widow's Estate by the Custom of the Manor upon the Death of her Husband, need not pay a Fine to the Lord for the Estate, for this is only a Branch of the Estate of her Husband's. *Hob. 181.*

Scot being a Copyholder in Fee surrendered to the Use of the Plaintiff in Fee, and died, leaving his Wife, who claim'd her free Bank by the Custom, and at the next Court the Surrender was presented, and thereupon the Plaintiff admitted; and the Question being, whether the Surrenderer or the Wife for her Frank-Bank should have these Lands, it was adjudged for the Plaintiff, for the Wife's Title does not commence till after the Death of her Husband, and then only to those Lands of which he died seiz'd; but the Plaintiff's Title began by the Surrender, for the Admittance relates to that, and that the Case of two Jointenants. *1 Inst. 59. B. rules this Case.*

If a Copyholder is *Mutus & Surdus*, the Lord shall have the Custody, and not the *prochein amy.* *45 Eliz. Cro. Jac. 105.*

See *Common. By-Laws.*

ordwainners, See Leather and Tanners.

Corn and Grain.

No Drover of Cattle, Badger Lader, Kidder, Carrier, Buyer or Transporter, of Corn or Grain, But-ter and Cheese, shall be licens'd or allow'd, but at the general Quarter Sessions of the County where he hath dwelt for three Years, next before the Date of his said License nor shall any be licens'd but married Men and Housekeepers, of thirty Years of Age at least; and such

Licenses

Feme Covert can't surrender into the Hands of two Tenants.

Widow who has her Husband's Copyhold Lands by Custom need not pay a Fine.

Husband surrenders, and dies before Admittance, the Widow loses her Frank-Bank.

5 Eliz. c. 12.

Licenses shall have Continuance but for one Year after the Date. *Stat. 5 Eliz. cap. 12.*

Which Licenses, shall bear Date the Day and Place of the holding the Sessions, and be sign'd and seal'd by three Justices at least, (*Quor. Un.*) on pain that every one that takes any other License, shall forfeit five Pounds, and the License shall be void. *Ibid.*

But he must
not forestal
the Market.

And the Sessions are impowered to take a Recognizance of such as shall be admitted Drovers, Badgers, or Carriers, or Buyers of Corn, Grain, Butter or Cheese, that they shall not forestal, or ingross, or practice any thing contrary to the 5 & 6 Ed. 6. c. 14. against Forestallers, Regrators, and Ingrossers, and for every such License, there shall be paid twelve Pence, for every Recognizance eight Pence, and for registering the same four Pence, and no more; and the Clerk of the Peace shall register an Abstract of every such License in a Book, which he shall have with him at every Sessions. *Ibid.*

Or buy out of
a Market, on
pain of 5 l.

Provided that none by virtue of such License, shall buy any Corn or Grain out of open Fair or Market, to sell again, unless licens'd thereto by special Words, on pain of five Pounds; one Moiety of which Forfeitures to go to the Crown, and the other to him that will sue for the same, in any of the Queen's Courts of Record. *Ibid.*

The Quarter Sessions are impowered to hear and determine Offences against this Act, and to estreat the Forfeitures incur'd to the Queen's Use, and to award Execution of the Informers Moiety by *Fieri facias* or *Capias*. *Ibid.*

Provided that Corporate Towns may license Purveyors as they might have done heretofore, nor shall this Act be prejudicial to the Counties of *Westmoreland*, *Cumberland*, *Lancaster*, *Chester* or *York*, but they may do as heretofore. *Ibid.*

1 W. & M. c. 12.
For Corn, &c.
transported
the following
Premiums to
be allow'd.

When Malt or Barley *Winchester* Measure, is 24 s. per Quarter, or under, Rye 32 s. and Wheat 48 s. in any Port of this Kingdom, every Person who shall put on the following Board in *English* Shipping, the Master and two Thirds of his Mariners being *English*. any of the said Sorts of Corn, to export the same beyond Sea, he shall bring a Certificate under his Hand, containing the Quantity and Quality of such Corn, to the Commissioners, &c. of the Customs within such Port, and upon Proof of such Certificate by one Person, upon Oath and Bond given by the Transporter, of two Hundred Pounds for every Hundred Tun so ship'd, and so proportionably, that the said Corn (Danger of the Seas excepted) shall be exported, and not reloaded in *England*, *Wales*, or *Jersey*, such Transporter shall

shall receive from the said Commissioners, &c. upon demand, for every Quarter of Barley or Malt, ground or unground, 2 s. 6 d. for Rye 3 s. 6 d. and for every Quarter of Wheat 5 s. without paying any Custom, Fee, or Reward, for Corn so exported: And upon Certificate under the Common Seal of the Chief Magistrate of any Place beyond Sea, or under the Hands and Seals of two known English Merchants, that such Corn was landed there, or upon Proof by credible Persons, that it was taken by Enemies, or perish'd at Sea, before such Commissioners, &c. the said Bond shall be deliver'd up to such Exporter, or his Order, to be cancell'd *Gratis*. Stat. 1 W. 4 M. cap. 12.

See *Forestallers*.

Coroners.

NO Coroner shall hold Pleas of our Crown. Stat. Mag. Mag. Chs. c. 17. Chas. cap. 17.

Sufficient Men shall be chosen Coroners, of the most discreet Knights that may best attend such Offices, and the Sheriffs shall have County Rolls with the Coroners, chosen of such things as belong to that Office; and no Coroner shall take any thing to do his Office, on pain of great Forfeiture to the King. Westm. 1. cap. 10. 3 Ed. 1.

See the Statute *de officio Coronatoris*, directing Coroners in their Inquiries. Stat. 4 Ed. 1.

Every Coroner shall have Land in Fee in the same County, sufficient to answer all People. Stat. 14 Ed. 3. cap. 8.

Coroners shall be chosen in full Counties, by the Commons of the most meet and lawful People that can be found there. Stat. 28 Ed. 3. cap. 6.

A Coroner shall have for his Fee, upon every Inquisition taken upon the View of the Body slain, 13 s. 4 d. of the Goods and Chattels of the Slayer, and if he have no Goods, he shall have the said Fee out of the Amercements of the Township, to be amerc'd for the Escape of such Slayer: And if any Coroner be remiss in his Duty, he shall forfeit five Pounds. Stat. 3 H. 7. c. 1.

Where any Person shall be slain by Misadventure, the Coroner shall not take any thing for doing his Office, on pain of forty Shillings, the Justices of Assize and Justices of Peace are empowered to hear and determine the said Offence, Stat. 1 H. 8. c. 7.

33 H. 8. c. 12. All Inquisitions upon the View of Persons slain in the Coroner of King's Palaces or Houses, shall be taken by the Coroner of the King's of the King's Household, without the Assistance of any Household to other Coroner, by the Oath of twelve or more of the take a Jury of Yeomen Officers of the King's Household, return'd by the the King's two Clerks Comptrollers, the Clerks of the Checque, and Officers. the Clerks Marshal, or one of them, to whom the said Coroner shall direct his Precept, which Coroner, shall be from time to time appointed by the great Master or Lord Steward of the Household, to whom he shall certify all Inquisitions, Indictments and Offices, taken upon the View of all dead Bodies. Stat. 33 H. 8. c. 12.

1 & 2 P. & M. Upon any Inquisition found before a Coroner, whereby c. 13. any Person shall be indicted for Murder or Manslaughter, Coroner to or as Accessory before to the same, he shall put in Writing the Effect of the Evidence given to the Jury before take the Evi- ting the Effect of the Evidence given to the Jury before dence in wri- him, and shall bind all such as prove any thing material, ring, and bind to appear at the next Goal Delivery, and give Evidence over the Wit- against the Party indicted, and he shall certify as well nesses. the Evidence as the Bonds he shall take, together with the Inquisition or Indictment found before him. on pain of being fin'd as the Justices of Goal Delivery shall think fit. Stat. 1 & 2 P. & M. cap. 13.

READINGS,

Coroner so Coroner was an Officer at Common Law, and call'd from be- was so call'd because he was principally concern'd ing concerned in the Pleas of the Crown, altho' the Statute of in Pleas of the Westm. 1. requires they should be Knights, This Crown. Qualification has long been dispens'd with, and Need not be it is held, that the Statute is sufficiently satisfied Knights now. if they be Persons of good Ability. F. N. B. 164.

How to be A Writ *de Coronatore elegendo* lieth where a chosen. Man who is Coroner dieth, or is discharg'd of his Office; and this Writ shall be awarded to the Sheriff, that he in full County by the Freeholders choose another in his Place. and certify the Election into Chancery. F. N. B. 163.

Their Num- In some Counties there are four Coroners, in ber. others six, and in some there are less, as the Usage is. F. N. B. 163.

Authority. Their Authority does not determine by the Demise of the King, as that of Judges does, who act by the King's Commission; and as he is chosen by

by the County, if he be not able to answer the Fines and other Duties in respect of his Office, the County are chargeable with them. 2 *Inst.* 174, 175.

Coroner hath no Jurisdiction of Offences committed at Sea between the High and Low Water Mark, when the Tide is in, tho' he has when it is out. 4 *Co.* 46. B. 3 *Inst.* 113.

Where one is Coroner both of the King's House and of the County, 'twas held, that an Indictment taken before him was good. 3 *Inst.* 134.

The Coroner ought to enquire of the Death of all Persons who die in Prison, as well as of those that are kill'd, that it may be known whether they died by Violence, or any unreasonable Hardships; for if a Prisoner by the Dureſs of the Goaler, comes to an untimely Death, this is Murder in the Goaler, and the Law implies Malice in Respect of the Cruelty. 3 *Inst.* 52, 91.

A Coroner has no Authority to take an Inquisition of Death without a View of the Body, and if the Inquest be taken by him without such View, it is void. 2 *Lev.* 140.

Coroner must view the Body, or the Inquest is void.

The Coroner may within convenient time, take up a dead Body that hath been buried, in order to view it, but if it have lain so long that he can discover nothing from the viewing it, or if there be Danger of Infection, the Inquest ought not to be taken by the Coroner, but by the Justices who take the Inquest by the Testimony of Witnesses, for none can take it on the View, but the Coroner. *Bro. Coron.* 167, 173. 2 *Lev.* 141.

Where the Justices and not the Coroner shall take the Inquest.

It is not necessary that the Inquisition be taken in the Place where the Body was view'd. 2 *Hawk.* 48.

The Coroner is to enquire of all Circumstances that occasion the Party's Death, and where it was found that the Deceas'd was kill'd by a Fall from a Bridge into a River, and that the Bridge was out of Repair, it was held, that the Inhabitants of the Township who were bound to repair it, should be amerc'd. *Aleyn* 51.

Where

The Act of
one the Act of
all in Judicial
Matters.

Where Coroners are impowered to act as Judges, as in taking an inquisition of Death, or receiving an Appeal of Felony, &c. the Act of one of them is of the same Force as if they all had join'd, but after one of them has proceeded to act, the Act of another of them will be void, and where they are impowered to act only ministerially, as in executing a Process directed to them upon the Incapacity of the Sheriff, their Acts are void if they do not all join. 2 *Hawk.* 52. *Hob.* 70.

If a Person indicted of Murder by a Coroners Inquest, be also found to have fled for it, and afterwards upon his Trial be acquitted of the Murder, and found not to have fled for it, yet it is held, that he shall forfeit his Goods; and it is said, that the Party hath no Remedy whatsoever to traverse such Flight found against him by the Coroners Inquest. *Bro. Trav.* 229. 2 *Lev.* 141.

*Melins inquir-
endum.*

If a Coroner hath been guilty of any corrupt Practice, in taking the Inquisition, a *melius inquirendum* may be awarded for taking a new one by special Commissioners, who are not to proceed on the View of the Body, but by Testimony of Witnesses; but where an Inquisition is quash'd for a Defect in Form, he may take a new one. 1 *Mod.* 82. *Salk.* 190.

If it be found before the Coroner *super Visum Corporis*, that one was *felo de se*, the Executors or Administrators of the Deceas'd cannot traverse it. 3 *Inst.* 55.

Coroner
ought to hear
Council.

May be re-
moved.

Lord Chief
Justice Sove-
reign Coroner.

This Inquisition being final, the Coroner ought to hear Counsel, and Evidence on both Sides. 2 *Syderf.* 90, 101.

The King may discharge a Coroner from his Office by a Writ of *Quia Minus idonius* generally, or for good Causes which are not traversible. 5 *Rep.* 58. 8 *Rep.* 41.

The Lord Chief Justice of the *King's Bench* is the Sovereign Coroner, and may view the Body and record it where ever he is. 4 *Inst.* 73.

Corporations.

Corporations.

NO Masters, Wardens, and Fellowships of Crafts or 19 H. 7. c. 7. Mysteries, nor any Rulers of Guilds and Fraterni- Corporations ties, shall make any Acts or Ordinances in Disinheritance or to make no Diminution of the King's Prerogative, or of other, or acts in dimi- against the common Profit of the People, except the same nution of the be examin'd and approv'd by the Chancellor, Treasurer, Prerogative on or Chief Justices, or three of them, or before the Justi- pain of 40 l. ces of Assize in their Circuit, in the Shire where such Acts were made, on pain of forty Pounds; and such Bo- dies Corporate shall not make any Acts or Ordinances to Nor to re- restrain any Person to sue to the King or his Courts for strain Persons Remedy, nor inflict any Penalty for any such Suit, on pain to sue in the of forty Pounds. Stat. 19 H. 7. cap. 7. King's Courts.

And no Masters, Wardens, &c. shall take for the En- 22 H. 8. c. 4. try of any Apprentice into their Fellowship, above two Fees of Ap- Shillings and six Pence, or for his Entry when his Term prentices. is expir'd, above three Shillings and four Pence, on pain of forty Pounds; one Moiety to the Crown, and the other to him that will sue for the same. Stat. 22 H. 8. cap. 4.

No Masters, Wardens, &c. of Guilds or Brotherhoods, 28 H. 8. c. 5. shall compel or cause any Apprentice or Journeyman, by No Bonds to Oath or Bond, that he shall not after his Apprenticeship be taken of expir'd, set up or keep any Shop, House, or Cellar, nor Apprentices occupy as a Freeman, without the License of the Master, not to set up, Wardens, &c. nor exact or take of any Apprentice or &c. on pain Journeyman, or others being for themselves after their of 40 l. Term is expir'd, any Sum or other thing for their Freedom or Occupation, other than is limited and appointed by the 22 H. 8. cap. 4. on pain of forty Pounds; to be divided between the King and the Prosecutor. Stat. 28 H. 8. cap. 5.

All and every particular Act, Order, Rule and Statute, 33 H. 8. c. 27. made by the Founders of any Hospital, College, Deanary The major or other Corporation, whereby the Grant, Lease, Gift, part of a Cor- or Election, of the Governor or Ruler of such Corpora- poration shall tion, with the Assent of the Major part of those as shall bind the lesser. have a Voice, or assent to the same, shall be in any wise hinder'd or let by one or more, being the lesser Number of such Corporation, contrary to the Common Law of this Realm, shall be void, and of no Effect. Stat. 33 H. 8. cap. 27.

And all Oaths taken by any Person of such Corpora- And all Oaths tion, for the Observance of any such Order or Statute, to the contra- shall ry be void.

shall be void ; and no Member of any such Corporation, shall be compell'd to take an Oath for the observing such Statute, on pain that every Person giving such Oath, shall forfeit five Pounds, to be divided between the King and the Prosecutor, to be recover'd in any of the King's Courts of Record. *Ibid.*

1 & 2 P. & M.
c. 7. No Strangers shall sell their Wares by retail in Corporate Towns. Except at Fairs.

No Person dwelling out of any City, Borough, Town Corporate, or Market Town, shall sell by Retail any Woollen or Linnen Cloth, Haberdash Wares, Grocery or Mercery Wares, within any of the said Cities, Towns Corporate, or Market Towns or Liberties of the same, except in open Fairs, on pain of six Shillings and eight Pence for every Offence, and the Forfeiture of all Wares so offer'd to be sold ; one Moiety to the Crown, and the other to the Prosecutor, to be recover'd in any of their Majesty's Courts of Record. *Stat. 1 & 2 P. & M. c. 7.*

Provided that this do not extend to any such Wares to be sold by Wholesale. *Ibid.*

Provided also that every Freeman in such Towns Corporate or Market Towns, dwelling within the same, may sell the said Wares by Retail as heretofore. *Ibid.*

And except their own Manufactures.

Provided also, that all Persons may sell by Retail or otherwise, all manner of Cloth, Linnen or Woollen, of their own making, in every such Town Corporate or Market Town, as heretofore. *Ibid.*

Saving for the Universities.

This Act shall not be prejudicial to the Privileges of the Universities of Cambridge and Oxford. *Ibid.*

13 Car. 2. c. 1. Officers of Corporations to receive the Sacrament and take the Oaths.

None shall be plac'd or elected in or to any Place or Office of Magistracy or other Employment relating to the Government of any City, Town Corporate, or of the Cinque Ports, and their Members, or any other Port Town that shall not within one Year before have taken the Sacrament of the Lord's Supper, according to the Church of England, and also taken the Oath of Allegiance, and the following Oath : viz.

I A. B. do declare and believe, that it is not lawful upon any Pretence whatsoever, to take up Arms against the King, and that I do abhor that traiterous Position of taking Arms by his Authority against his Person, or against those that are commission'd by him.

So help me God.

And in default thereof, every such Placing and Election is declar'd void : Which said Oaths, shall be administred by two Justices of Peace of the said Corporations, if there be

be two there, otherwise by two Justices of Peace of the respective Counties. Stat. 13 Car. 2. cap. 1.

N. B. The said Oaths are alter'd by 1 W. & M. cap. 4.

READINGS.

Corporations are so call'd, because the Persons Corporations, are made into a Body, and are of Capacity to how constitu- take and grant, &c. and this politick or corpo- ted, and the rate Body, may commence and be establish'd three several Kinds. Ways, viz. by Prescription, by Letters Patents, or by Act of Parliament: Every Body Politick or Corporate, is either Ecclesiastical or Lay; Ecclesiastical, either regular, as Abbots, Priors, &c. or secular, as Bishops, Deans, Archdeacons, Parsons, Vicars, &c. Lay, as Mayor and Commonalty, Bailiffs and Burgeses, &c. Also every Body Politick or Corporate, is either elective, presen- tative, collative, or donative; and again, it is either sole, or aggregate of many: Sole, as the King, Bishop, Parson, &c. Aggregate, of many, as Mayor and Commonalty, Dean and Chapter, &c. 1 Inst. 250. 10 Co. 29.

There is this further Difference between a Corporation aggregate of many, and a sole Corporation; If Lands be given to a Dean and Chapter, they have a Fee-Simple, without the Word Successors, because this is a Body that never dies; but if Lands be given to a Bishop, Parson, or other sole Corporation, who after their Deaths have a Succession there, without the Word Successors, nothing passes to them but for Life: Also Lands must be given to a Corporation aggregate of many by Deed, but to a sole Corporation may be granted without Deed. 1 Inst. 94.

If Land be given in Fee-Simple to a Dean and Chapter, or to a Mayor and Commonalty, and Lands given to a Corpora- tion, upon a to their Successors, and after such Body Politick Dissolution again the Land, and not the Lord by Escheat. revert to the Donor. 1 Inst. 13. 1 Inst. 9.

VOL. II.

K

King,

King, a Fee-Simple passes, without the Word Successors or Heirs. 1 *Inst.* 9.

At Common Law, Bishops with the Confirmation of the Dean and Chapter, Master and Fellows of any College, Deans and Chapters, Master or Guardian of any Hospital, and his Brethren, Parson or Vicar, with the Consent of the Patron and Ordinary, Archdeacon, Prebend, or any other Body Politick, Spiritual and Ecclesiastical (*Concurrentibus his quæ in Jure requiruntur*) might have made Leases for Lives or Years, without Limitation or Stint. And so might they have made Gifts in Tail, or Estates in Fee, at their Will and Pleasure, but were disabled by the Statutes of 1 *Eliz.* 13 *Eliz.* 18 *Eliz.* & 1 *Jac.* to make any Conveyance either to the King or a Subject; but there is excepted out of this Restriction or Disability, Leases for three Lives, or one and twenty Years, under such Restrictions as are contain'd in the said Acts, and they may make Grants of ancient Offices of Necessity, with ancient Fees, for these are not within the said Statutes. 1 *Inst.* 44.

An Abbot, Prior, Bishop, Dean, Archdeacon, Prebend, Parson, Vicar, or any other sole Corporation that is seisd in *auter droit*, cannot disclaim, because they alone cannot divest any Fee which is vested in their House or Church. 1 *Inst.* 103.

If there be Mayor and Commonalty of *D.* and the Mayor dieth, a Grant made to the Mayor and Commonalty of *D.* is void; but if a Lease for Life be made, Remainder to the Mayor and Commonalty of *D.* the Remainder is good if there be a Mayor elected during the particular Estate. 1 *Inst.* 264.

Ordinance to
imprison.

King *Edward* 6. incorporated the Town of *St. Albans*, and granted to them to make Ordinances, &c. They made an Ordinance upon pain of Imprisonment, and it was adjudg'd to be against the Statute of *Magna Charta*. So it is if such an Ordinance had been contain'd in the Patent it self. 2 *Inst.* 54.

King

King Henry 6. granted to the Corporation of Or to forfeit Dyers within *London*, Power to search, &c. and Wares, void. if they found any Cloth dyed with Logwood, that the Cloth should be forfeited; and it was adjudged, that this Charter concerning the Forfeiture, was against the Law of the Land, and the Statute of *Magna Charta*, for no Forfeiture can grow by Letters Patents. 2 *Inst.* 47.

The Company of Merchant Taylors of *England*, having Power by their Charter to make Ordinances, made an Ordinance, that every Brother of the same Society should put the one Half of his Cloths to be dress'd by some Clothworker, free of the same Company, upon pain to forfeit ten Shillings, &c. And it was adjudg'd, that this Ordinance was against Law, because it was against the Liberty of the Subject, for every Subject hath Freedom to put his Cloths to be dress'd by whom he will, and *sic de similibus*; and so it is if such or the like Grant had been made by Letters Patents. 2 *Inst.* 47.

Mayor and Commonalty, or Corporation, cannot make another Corporation or Commonalty, either by Usage or Prescription, or otherwise than by the King's Charter, which must have express Words. *Bro. Corporation*, 45. *Bro. Prescription*, 12. 1 *Syderf.* 290.

One Corporation may be made out of another. 10 *Co.* 31 B.

Anciently the Inhabitants of a Town were incorporated by the King's granting them to have *Gildam Mercatorium*. 10 *Co.* 30.

If the King grants *hominibus de Islington* to be discharg'd of Toll, this is a good Corporation to this Intent, but not to purchase; but if the King gives Lands to the Inhabitants of *Islington*, and their Successors, if they were not incorporated before, this is a void Grant, for the King is deceiv'd. 2 *Danv.* 214.

Altho' no Power to make Laws, is given by a special Clause to a Corporation, yet it is included by Law in the very Act of incorporating, as is also the Power to sue, to purchase, and the like; but

Corporation may make By-Laws without special Authority.

but By-Laws must ever be subject to the general Law of the Realm, and therefore tho' there be no Proviso for that Purpose, the Law supplies it; and if the King in his Letters Patents of Incorporation do make Ordinances himself, they are also subject to the same Rule of Law. *Hob. 211.*

A Debt is due to an old Corporation, and they are incorporated by a new Name, the Debt due to the first Corporation remains due to the new one after the Name is chang'd by the Letters Patents. *3 Lev. 238.*

A Corporation aggregate, cannot without Deed command a Bailiff to enter into Lands of their Lease for Years for a Condition broke, for such Command without Deed is void. *Paſ. 40 Eliz. Dumper v. Syms. Cro. Eliz. 815.*

A Corporation may employ one in ordinary Services without Deed, as a Butler, Cook, &c. but not to appear for them in an Assize, or to do any other Act which concerns their Interest or Title. *1 Ventr. 47, 48.* But it is held, that a Man may avow the taking Cattel Damage Feasant as Bailiff to a Corporation aggregate, without having any Precept in Writing. *Hill. 35 Car. 2. Manby v. Long. 3 Lev. 107.*

Where a sole Corporation may take a Chattel in Succession, and where not.

If a Lease for Years be made to a Bishop and his Successors, yet his Executors or Administrators shall have it in *auter droit*, for regularly no Chattel can go in Succession in case of a sole Corporation, no more than if a Lease be made to a Man and his Heirs, it can go to his Heirs. *1 Inst. 46.* But a sole Corporation by Custom may be enabled to take a Chattel in Succession. *Cro. Eliz. 682. Hob. 64.*

In Debt by the Wardens, &c. for the Forfeiture upon a By-Law, they need not shew how they were incorporated, for the Name argues a Corporation. *Hob. 211.*

Where by the Charter of a Corporation, the Election was to be by the Freemen at large, it was held, that this might be restrain'd and regulated by Usage and By-Laws to the choice of one out of two only; and it was held, that a Surrender

der of an old Charter was void for want of Inrolment, and that when Members under a good old Charter join with the Members under a defective new one, their Acts are void. *Salk.* 190.

A Corporation aggregate may appoint a Bailiff to distrein without Deed or Warrant, as well as a Cook or Butler, for it neither vests nor divests any sort of Interest in or out of the Corporation. So held *inter Carey and Matthews in Cam. Scac.* *Salk.* 191.

Tho' a Corporation cannot do an Act in *Pais* without their Common Seal, yet they may do an Act upon Record, and that is the Case of the City of *London* every Year, who make an Attorney by Warrant of Attorney in this Court, without either sealing or signing, and the Reason is, because they are estopp'd by the Record, to say it is not their Act. *Salk.* 192.

The City of *London* cannot make a Corporation, for that can only be created by the Crown, but *London* or any other Corporation may make a Fraternity. *Salk.* 193,

A Corporation is properly an investing the People of the Place with the local Government thereof, and therefore their Law shall bind Strangers; but a Fraternity is some People of a Place united together in respect of a Mystery and Business into a Company, and their Laws and Ordinances cannot bind Strangers, for they have not a local Power or Government. *Salk.* 193.

Difference between a Corporation and a Fraternity.

Members of a Corporation cannot regularly be Witnesses for the Corporation, especially if by their Testimony any considerable Advantage is to accrue to the Body. *11 Co.* 98.

A Corporation aggregate may have Power by Where a Member of a Corporation may be disfranchis'd.
Charter or Prescription, to disfranchise or discharge a Member of his Freedom, if he doth any Act to the Prejudice of the Body, or against his Oath; but if they have no such Authority by their Charter, he must be convicted by Course of Law, before he can be disfranchis'd, and if he is wrongfully remov'd, he may have a *Mandamus* from the *King's Bench* to restore him. *11 Rep.* 98.

Corporations aggregate may be dissolv'd either by Death of all the Members, or by Forfeiture of their Charter by Usurpation, Misuser, &c. And it may be also dissolv'd by Surrender.

Costs.

Stat. of Glouc.
6 Ed. 1. c. 1.
Damages
given in real
Actions.

Costs to be
recover'd
where Dama-
ges are given.

6 Ed. 1. c. 14.
City of Lon-
don.

Expos. Stat.
Glouc.

3 H. 7. c. 10.
Costs and Da-
mages on a
Writ of Er-
ror.

19 H. 7. c. 20.

23 H. 8. c. 15.
Where the
Defendant
shall have
Costs if the

DAmages shall be recover'd against the Alience of a Disseisor as well as against the Disseisor himself.

Damages shall also be recover'd in an Affize of *Mortdancer*, Writs of *Cousenage*, *Aiel* and *Besael*, and every Tenant shall answer for his Time.

And the Demandant shall recover against the Tenant as well the Costs of his Writ as the Damages abovesaid, and this shall hold place in all Cases where the party shall recover Damages; and every Person shall render Damages where the Land is recover'd against him upon his own Intrusion or Act. *Stat. Glouc. 6 Ed. 1. cap. 1.*

Citizens of *London* disseised shall have Damages by Recognizance of the same Affize whereby they recover their Lands, and the Disseisor shall be amerced by two Barons of the Exchequer, who shall once a Year resort to the City for that purpose, and the Barons and the Treasurer of the Exchequer, or any two of them, shall cause it to be levied every Year at *Candlemas*. *Stat. Glouc. 6 Ed. 1. cap. 14.*

In Writs of Entry upon Disseisin, and in Writs of *Mortdancer*, *Cousenage*, *Aiel* or *Besael*, or of Intrusion by his own Act, Damages shall run after the Writ purchas'd against them that hold since the Staute, altho' their Ancestors died seisd. *Exposition of Stat. Glouc.*

If any Defendant or Tenant against whom Judgment is given, sue a Writ of Error to reverse such Judgment only to delay Execution, if the Judgment be affirm'd, or the Writ discontinu'd, or the Plaintiff in such Writ of Error be nonsuited, the Person against whom the said Writ of Error is sued, shall recover his Costs and Damages. *3 H. 7. cap. 10.*

The abovesaid Statute of 3 H. 7. cap. 10. is confirm'd. *Stat. 19 H. 7. cap. 20.*

If any Person commence a Suit in any Court of Record, or elsewhere, by Action, Bill or Plaint, of Trespass upon the Statute of 5 R. 2. cap. 7. (against forcible Entries) or any Action, Bill or Plaint, of Debt or Covenant upon any

any Specialty, or upon any Contract, or in detinue Ac- Plaintiff be
count, or any Action, Bill or Plaint, upon the Case, or Nonsuit, &c.
upon any Statute for any Offence suppos'd to be done by
the Defendant, every such Plaintiff in any such Action,
Bill or Plaint, who after the Defendant's Appearance shall
be nonsuited, or a Verdict pass against him, shall pay
Costs, which shall be assess'd by the Judge of the Court,
and the Defendant shall have such Process and Execution
for Recovery of the same as the Plaintiff might have had
in case Judgment had been given for him. Stat. 23 H. 8.
cap. 15.

Provided that Paupers shall not pay Costs, but be pu- 23 H. 8. c. 15.
nish'd at the Discretion of the Justices. Ibid. Paupers to be

But no Costs shall be awarded to the Defendant where punish'd.
the Suit is commenc'd for the Use of the King. Stat. 24 H. 8. c. 8.
24 H. 8. cap. 8. No Costs at

In personal Actions (not concerning any Title or Inte- the King's
rest in Lands, or the Freehold or Inheritance thereof, nor Suit.
for any Battery) if it appear to the Judges before whom 43 Eliz. c. 6.
the same shall be tried, and be so signified, that the Debt No more
or Damages do not amount to 40 s. then the said Judges Costs than
shall award no more Costs than Damages, but less at their Damages
Discretions. Stat. 43 Eliz. cap. 6. where the Da-

If any Person shall bring any Action, Bill or Plaint, of mages are wi-
Trespass, or Ejectione firmae, or any other Action whatso- der 40 s.
ever wherein the Plaintiff or Defendant might have Costs, 4 Jac. 1. c. 3.
and the Plaintiff or Demandant after Appearance of the Defendant to
Defendant be nonsuited, or a Verdict pass against him, have Costs in
then the Defendant shall have Costs, to be levied accord- all Cases where
ing to the Statute of 23 H. 8. Cap. 15. Stat. 4. Jac. 1. the Plaintiff
cap. 3. should.

In all Actions of Slander, if the Damage, be found to 21 Jac. 1. c. 16.
be under 40 s. the Plaintiff shall recover no more Costs No more
than Damages. Stat. 21 Jac. 1. cap. 16. Costs than

If any Person prosecute a Writ of Error for reversing of Damages in
any Judgment given against him in the Courts at Westminster, or in the Counties Palatine of Lancaster, Chester, or 13 Car. 2. c. 2.
Durham, or in the great Sessions in Wales, and the said Double Costs
Judgment shall be affirm'd, he shall pay unto the Defen- given the De-
dant in such Writ of Error double Costs, to be assess'd by fendant in a
the Court. Stat. 13 Car. 2. c. 2. Writ of Error.

Provided that this do not extend to Actions popular,
or other Actions upon penal Statutes, (except Debt for not
setting out Tythes) nor to any Indictment, Presentment,
Inquisition, Information, or Appeal. Ibid.

In Trespass, Assault and Battery, or other personal Acti- 22 & 23 Car. 2.
ons, if the Judge do not certify upon the Back of the Re- c. 9. Judge 2.
cord that the Battery was sufficiently proved, or the Title certify, &c. to
K 4 of or no more

Costs than
Damages.

of the Land mention'd in the Plaintiff's Declaration was chiefly in Question, the Plaintiff shall recover no more Costs than Damages; and if there shall be awarded more, the Judgment shall be void, and the Defendant shall have his Action of Trespass against the Plaintiff for his vexatious Suit, and shall recover his Damages with Costs. *Stat. 22 & 23 Car. 2. c. 9.*

8 & 9 W. 3.

c. 11. Several Defendants in Trespass, &c. every Person acquitted shall have his Costs.

8 & 9 W. 3.

c. 11. Costs given the Defendant upon a Demurrer, and on a Writ of Error.

Where several Persons shall be made Defendants to any Action or Plaint of Trespass, Assault, false Imprisonment, or *Ejectione firmæ*, and one or more of them shall be acquitted, every Person so acquitted shall have his Costs as if a Verdict had pass'd against the Plaintiff, unless the Judge shall certify upon the Record under his Hand in open Court, that there was a reasonable Cause for making such Persons Defendants. *Stat. 8 & 9 W. 3. cap. 11.*

And if any Person shall prosecute any Action, Plaint or Suit, wherein upon a Demurrer Judgment shall be given against the Plaintiff or Demandant or if after Judgment for the Defendant, the Plaintiff or Demandant shall sue a Writ of Error, and the said Judgment shall be affirm'd, the Writ of Error discontinued, or the Plaintiff shall be Nonsuit, the Defendant or Tenant shall have Costs, and have Execution for the same by *Ca Sa Fieri Facias* or *Elegit*. *Stat. 8 & 9 W. 3. cap. 11. 11.*

In Waste

Debt on the Statute for Tythes, in Suits on Writs of *Scire Facias*, Prohibition, Costs are given.

And in wilful
Trespass.

And in all Actions of Waste Debt upon the Statute for not setting out Tythes where the single Value or Damage found does not exceed twenty Nobles, and in Suits upon Writs of *Scire Facias*, and Suits upon Prohibitions, the Plaintiff obtaining Judgment or award of Execution after Plea pleaded, or Demurrer join'd, shall likewise recover Costs; and if the Plaintiff be Nonsuit, or discontinue, or a Verdict pass against him, the Defendant shall have Costs and Execution for the same in like manner. *Ibid.*

And in Actions of Trespass brought in of the Courts at *Westminster*, where at the Trial it shall be certify'd by the Judge upon the Back of the Record that the Trespass was wilful and malicious, the Plaintiff shall recover not only his Damages but full Costs. *Ibid.*

Provided that this do not extend to Executors or Administrators where they are not at present liable to pay Costs. *Ibid.*

11 & 12 W. 3.
c. 9. Wales.

The Statute of 22 & 23 Car. 2. cap. 9. is declar'd to extend to the Courts in Wales, and to the Counties Palatine of Lancaster, Chester, and Durham. *Stat. 11 & 12 W. 3. c. 9.*

4 & 5 A. c. 16.
Costs upon
Insufficiency
of Matter in
Demurrers,

If a Defendant or Tenant with the Leave of the Court shall plead any Matter which upon a Demurrer join'd shall be judg'd insufficient, Costs shall be given at the Discretion of the Court; or if a Verdict shall be found upon any

any Issue in the said Cause for the Plaintiff or Demandant, and on Pleas Costs shall be likewise given, unless the Judge certify that there was probable Cause for such Plea. where no probable Cause.

READINGS.

The Statute of *Gloucester*, cap. 1. by Equity is extended to them that came in by Wrong, and also to them whose Estate was before the Disseisin: For Example, If the Disseisor was disseis'd, the second Disseisor is within this Statute; for if he that comes in by Title shall be within the Remedy of this Law, *a fortiori* he that comes in by the Wrong; and so it is of all others that come in under the Disseisor, though it be not by Alienation. 2 *Inst.* 284. To whom the Statute of Glou. extends.

But no Lessee for Years, or Tenant by Statute Staple or Merchant, or the like, that have but a Chattel, shall be accounted a mean Occupier within this Statute, but he that hath the Inheritance or Freehold at the least, otherwise he is not said to be a Tenant of the Land, and so much is imply'd in this Word Alien; which cannot be intended of a Lessee for Years, &c. where he that bringeth the Assize hath Right to the Inheritance of the Freehold; but where Tenant by Statute Merchant or Staple, &c. brings an Assize. there Lessee for Years, or Tenant by Statute Merchant or Staple, &c. may be a mean Occupier, because the Plaintiff in the Assize hath Right but to a Chattel. *Ibid.* And to whom not,

But it is held, 1. That if the Disseisor be sufficient to yield the whole Damages, he is solely to be charg'd therewith, for then this Statute extendeth not to the Tenant, and as it appeareth by the Preamble, he was not answerable by the Common Law. *Ibid.* Where it extends to the Disseisor, and where to the Tenant.

2. That for the Insufficiency of the Disseisor, the Tenant shall answer the Damages by this Act. *Ibid.*

3. That if the Disseisor be able to yield part, and not the whole Damages, both shall be charg'd, and therefore Judgment is ever given as well against the Disseisor (though he be found

found insufficient) as against the Tenant generally. *Ibid.*

No Damages were recoverable in real Actions at Common Law.

Regularly in personal and mixt Actions Damages were recover'd at Common-Law, but in real Actions no Damages were to be recover'd, because none were demanded either by the Writ or Count; but in real Actions where Damages are given by this Act, the Demandant shall recover Damages *pendente brevi*. 2 *Inst.* 286.

Damages *pendente brevi*, recoverable now.

If the Disseisor make a Feoffment in Fee, and the Disseisee dieth, the Heir of the Disseisee shall not recover Damages by this Act against the Alienee, for this Branch of the Act provideth for the Disseisee, and not for his Heirs; but if a Man be disseis'd, and the Disseisee die, his Heirs shall recover Damages against the Disseisor from the Death of his Ancestor. 2 *Inst.* 286.

The Demandant to recover Damages but from the Death of his immediate Ancestor.

And it is a Rule upon this Statute, that in none of the Writs therein mentioned, the Demandant shall recover Damages but from the Death of his next immediate Ancestor. 2 *Inst.* 288.

Damages and Costs shall not exceed the Damages demanded.

And although in this Statute of Gloucester here is expresse mention made only of the Costs of the Writ, yet it extendeth to all legal Costs of the Suit, but not to Costs and Expences in his Trouble and loss of Time. 2 *Inst.* 288.

Costs doubled and trebled, where double and treble Damages given.

If the Plaintiff in Trespass declare to the Damages of twenty Marks, and the Jury give twenty Marks Damages, and twenty Marks for Costs, yet shall the Plaintiff recover in all but twenty Marks; for Damages and Costs must not exceed the Damages which the Plaintiff demands by his Count, and the Entry recites both the Damages and Costs. 2 *Inst.* 288.

Whenever any Statute doth increase Damages to the double or treble Value, &c. where Damages before were given, there the Demandant or Plaintiff shall recover his double or treble Damages and Costs; and the Costs also

also as Parcel of the Damages shall be trebled.

2 *Inst.* 289.

And where Damages double or treble are in an Action newly given, where no Damages were formerly recoverable, there the Demandant or Plaintiff shall recover those Damages only, and no Costs; for Example, in an Action upon the Statute of forcible Entry upon the Statute of 8 H. 6. which giveth treble Damages, in this case the Plaintiff shall recover his Damages and his Costs to the treble, for that he should have recover'd single Damages at the Common Law, and the Statute increas'd them to treble. *Ibid.*

But upon the Statute of 1 & 2 Ph. & M. for chasing of Distresses out of the Hundred, &c. whereby 5 l. is given and treble Damages, the Plaintiff shall recover no Costs, because this Action and Penalty is newly given. *Ibid.*

And so in a *Quare Impedit* no Costs, for that no Damages were given at the Common Law. *Ibid.*

In an Action of Waste against Tenant for Life or Years, the Plaintiff shall recover the Place wasted and treble Damages, but no Costs, because no Action lay against them at the Common Law, but the Action and Damages are newly given. But against the Gardein or Tenant in Dower, &c. there the Plaintiff shall recover treble Damages and Costs also, for that an Action lay against them at the Common Law, and for the Waste, Damages should be recover'd, and so are all the Books that seem *prima facie* to be at Variance well reconcil'd. *Ibid.*

If a Coparcener refuse to make a Partition in a Writ of Partition against her, the Plaintiff shall not recover Damages, for this Writ is a Writ of Right in its Nature, and she hath a Right *per my & per tout* to take the Profits. 2 *Inst.* 289.

In *London* if one were disseiz'd of his Freehold before the Statute of *Gloucester*, he could not

Unless where
no Damages
were formerly
recoverable,
for there only
Damages shall
be recover-
able.

Partition.

London.

not in the Assize of fresh Force recover Damages, but the Land only, because the Assize of fresh Force did not lie by original Writ, but by Bill, and therefore if he would recover Damages, he must tarry until the Justices in Eyre came into the Tower, who came but once in seven Years; and therefore this Statute doth give Damages in the Assize of fresh Force, and by Equity it extendeth to *Gloucester*, and to other Cities and Boroughs which by Usage and Custom hold Plea of Assize of fresh Force by Bill.

Increase of Damages.

If Damages be too small, the Court have Power to increase them. 2 *Inst.* 200.

No need of Judge's Certificate where the Title in Question.

To entitle the Plaintiff to Costs by virtue of 22 *Car. 2. cap. 19.* there is no need of a Certificate from the Judge where it appears by the Pleading that the Title or Interest of the Land is in Question, as in an Action for eating his Grass *per quod* his Common was impair'd. 2 *Mod.* 141, 142.

Assault.

Where an Assault only is proved, the Plaintiff shall have no more Costs than Damages, and this was adjudg'd in a Case where the Defendant drew his Sword and wav'd it in a menacing manner against the Plaintiff. 1 *Vent.* 256. 2 *Lev.* 102.

Trespass for entring his Close and spoiling his Grass, the Defendant justifies for a Way; there the Plaintiff replies *extra Viam*, and Issue thereupon, and Verdict for the Plaintiff, and whether the Plaintiff should have Costs or no more Costs than Damages upon the new Statute, was the Question: For it was said, no Title came in Question upon the Trial, for the Way is admitted, and the Issue is now only whether he was guilty *extra Viam*, *sed per Cur.* the Plaintiff shall have full Costs: For, 1st, There was a Title to the Way in Question upon Record, and so the Case is out of the Intent of the Statute. 2^{dly}, Upon this Issue *extra Viam* a Title to the Way is in Question, *viz.* of what extent the Way is, whether ten or twenty

twenty Foot in Breadth, &c. all which came in Question upon the Trial, otherwise perhaps if the Extent and Place where the Way lies had been agreed in the Pleadings; but as it was the Plaintiff had Judgment and full Costs by the Rule and Direction of the Court. 2 Lev. 234.

If in Debt the Defendant pleads four several Pleas upon which they are at Issue, and the Jury find one Issue for the Plaintiff and Damages 12*d.* another Issue for the Plaintiff and Damages 10*d.* and another Issue for the Plaintiff and Damages 6*d.* and one Issue against the Plaintiff, they must assess the Costs entirely, and not according to the Damage severally for every Issue found for the Plaintiff. Hill. 18. H. 8. Kelw. 41. ruled accordingly *per Curiam*.

Costt must be assess'd entire.

If in Trespass brought against two Defendants, one is found guilty for himself, and the other guilty for himself, and Damages severally assess'd, yet the Costs shall be joint. 10 Co. 117. *b.*

If Executors bring an Action in their own Right, as for Conversion or Trespass in their own Time, and a Verdict pass against them, they shall pay Costs. 2 Danv. 224.

Where Executors shall pay Costs.

In Covenant against two for not Building, Judgment is given against one by Default, and the other pleads Performance, and it is found for him, the Plaintiff can have no Judgment, but the Defendant shall have his Costs on the Verdict against the Plaintiff, but the Plaintiff shall have neither Costs nor Damages against the other. 4 Lev. 63.

One is admitted in *Forma Pauperis*, and after Dispauperate, the usual Course in such Cases is to tax Costs, and if not paid, to whip the Plaintiff; but it is in the Discretion of the Court upon Consideration of the Circumstances of the Case to spare both. 2 Syderf. 261.

The Statute of 4 Jac. cap. 3. which gives Costs to the Defendants, extends not to Executors who sue in *auter droit*. Cro. Jac. 229.

Executors.

But

But where it is for a Conversion or Tort in their own Time, they shall pay Costs. *Arkey v. Heard. Cro. Car. 159.* But if an Executor brings an *Indebitatus* upon an Account made in his Time, it is in the Right of his Executorship, and he shall pay no Costs. 2 *Lev.* 165.

See *Title Suits.*

Cottages.

31 *Eliz. c. 7.*
None to erect
a Cottage
without lay-
ing four Acres
of Land to it,
on pain of 10*l.*

Or continue
it on pain of
40 *s.* per
Month.

No Inmate or
more Families
than one to
dwell in a
Cottage, on
pain of 13 *s.*
per Month.

NO Person shall build or erect, or cause to be built or erected, any manner of Cottage for Habitation or Dwelling, or convert any Building to be us'd as a Cottage, except he lay to such Cottage or Building four Acres of Ground at least, being his own Freehold or Inheritance, lying near such Cottage, to be continually occupied therewith as long as the same shall be inhabited, on pain of forfeiting 10 *s.* to the Crown. *Stat. 31 Eliz. cap. 7.*

And every Person who shall willingly uphold, maintain, and continue any such Cottage hereafter to be erected or converted into a Dwelling without four Acres of Ground laid to the same as aforesaid, shall forfeit 40 *s.* to the Crown for every Month it shall be so upholden or continued. *Ibid.*

Provided that there shall not be any Inmate or more Families than one dwelling in any one Cottage, on pain that every Owner or Occupier of such Cottage suffering the same, shall forfeit to the Lord of the Leet 10 *s.* for every Month that any such Inmate or other Family than one shall dwell in such Cottage, and the Lords of Leets and their Stewards are authoriz'd to enquire of such Offences, and upon presentment thereof to levy the Sum so forfeited, or the Lord of such Leet may recover such Forfeiture by Action of Debt in any of her Majesty's Courts of Record. *Ibid.*

And Justices of Assize and Justices of Peace in their open Sessions, and Lords of Leets, and no others, are authoriz'd to hear and determine all Offences contrary to this Act, by Indictment, Presentment, or Information, and to award Execution for the Forfeitures by *Fieri Facias*, *Elegit*, *Capias*, or otherwise. *Ibid.*

Provided

Provided that this Statute shall not extend to any Cot- Not to extend
tage to be erected in any City, Town-Corporate, or an- to Cottages in
cient Borough, or Market Town, or to Cottages erected Corporations
for necessary Habitation of Workmen in Mines, or Quar- or Market-
ries of Stone or Slate, or in making Brick, Tyle, or Lime, Towns, or
so as such Cottages be not above a Mile distance from the Cottages
places where they work. erected for

Provided also that this Act shall not extend to any Cor- Miners, &c.
tages within one Mile of the Sea, or upon any navigable Or for Sailors
River where the Admiral has Jurisdiction, so long as no within a Mile
Person inhabit therein but a Sailor, or one concerned in of the Sea.
the furnishing or victualling of Ships; nor to any Cottage
in a Forest, Chase, Warren, or Park, for the Habitation Or for a Park-
of the Keepers or Warreners; nor to any Cottage to be Keeper, &c.
made which by the Justices of Assize or Justices of Peace Or Cottages
at the Quarter-Sessions shall be decreed to continue for continued by
Habitation, for so long time only as they shall limit. Order of Ses-
Ibid. sions.

It shall be lawful for the Church Wardens and Over- 43 Eliz. c. 2.
seers of the Poor of any Parish, or the greater part of Cottages may
them, by Leave of the Lord of the Manor, end upon be erected on
Agreement made with him in Writing under the Hand the Waste for
and Seal of such Lord, or by an Order of the Quarter- the Impotent
Sessions, by like Leave and Agreement of the said Lord, by the Lord's
to erect in convenient places in the Waste or Common, at Leave.
the Charges of the Parish, or of the Hundred or County,
Dwelling-Houses for the impotent Poor, and to place In-
mates or more Families than one therein notwithstanding.
31 Eliz. cap. 7. Which Cottages shall be used for the Ha-
bitation only of the Impotent and Poor of the Parish
that shall be placed there by the Church-Wardens and
Overseers, upon the like pains as are contain'd in the said
Act of 31 Eliz. Stat. 43 Eliz. cap. 2.

READINGS.

Cottage was a little House for the Habitation Cottage what
of poor Men without any Land belonging to it, it is.
but now by the said Statute of 31 Eliz. every
new erected Cottage shall have four Acres of
Freehold Land laid to it, except such as are there-
in excepted. 2 Inst. 738, 739.

The Statute of 31 Eliz. does not extend to Inmates may
Inmates in any other Houses but Cottages, but be in any
it extends to Inmates in Cottages which have Houses but
four Acres of Ground laid to them, as well Cottages.
as

as to those that have no Ground at all, and it extendeth also to Inmates of Cottages in any City, Town Corporate, or Market-Town. *Ibid.*

And this Statute authorizes the Lord of the Leet to sell the Distresses made for the Penalty. *Ibid.*

New Cottages
are not entitled to Common.

New erected Cottages within the Memory of Man, tho' they have four Acres of Ground or more laid to them, according to this Act are not entitled to Common in the Lord's Waste. 2 *Inst.* 740.

Cottages to be erected on the Waste only for the impotent Poor.

The Clause in the 43 *Eliz.* which authorizes the Church-Wardens and Overseers of the Poor, or the Justices of Peace in their Sessions, to erect Cottages for the Poor on the Waste, extends only to Cottages for the Habitation of such Poor as are impotent; and if it appear not in the Face of the Order that the Person was impotent as well as poor, the Order is ill. 5 *Mod.* 397.

Attorney-General may bring an Information in the King's Bench, tho' the Statute restrains the Prosecution to inferior Courts.

An Information was exhibited in the Court of King's Bench for erecting a Cottage contrary to the Statute 31 *Eliz. cap. 7.* and upon Issue join'd it was found for the King, altho' the Parish erected it, for that it was not allow'd by the Justices of Peace as the Statute directeth; and it was moved to quash the Information, because it did not lie in this Court, in as much as the Statute directs that these Offences should be punish'd by the Justices of Assize, Justices of Peace in their Sessions, Lords of Leets, and no others. To this it was answer'd by Mr. Justice *Twisden*, that it has been holden upon this and other penal Statutes, where there are the Words *and no others, and not elsewhere, &c.* that notwithstanding such Words the Attorney-General may sue in this or any other Court if he sees fit. 2 *Syd.* 359, 360.

Cottage must be inhabited, or no Indictment lies for erecting it.

An Indictment for erecting a Cottage for Habitation contrary to the Statute quash'd, because it was not said that any inhabited it; For if it was not inhabited it is no Offence. *Trin.* 29 *Car.*

29 Car. 2. B. B. Rex v. Neville. 1 Ventr. 107.

1 Mod. 295.

John Stowe was indicted upon the Statute of 31 Eliz. because he had erected a Cottage five Years last past and had not allotted four Acres of Land according to the Statute *de Terris mensurandis*, and had continued it ever since. The first Exception was, That this Indictment was for erecting a Cottage five Years past, whereas every Offence ought to be punished within two Years Prosecution by Indictment or Information by the express must be with Words of the Statute of 31 Eliz. cap. 5. other- in two Years. wise it is not punishable, and therefore not good. Secondly, Because it doth not say that he volun- Must be laid tarily continued it, which are the express Words to be volunta- of the Statute. Thirdly, For that it is express'd rily conti- to be by the Statute *de Terris mensurandis*, nued. whereas there is not any such Statute, but it is an Ordinance only. And for these Causes the Indictment was held to be ill, and the Defendant was discharg'd. *Stowe's Case*, 18 Jac. 1. Cro. Jac. 603. *Salk.* 195.

Such poor People as are lawfully settled in a Poor may be Parish may by the Church Warden and Over- plac'd as In- seers of the Poor be plac'd as Inmates in Cot- mates by the tages notwithstanding the Statute of 31 Eliz. Parish. cap. 7.

Cotton Library.

AN Act for the better settling and preserving the Li- 12 W. 3. c. 7.
brary kept in the House at *Westminster* call'd *Cotton- Cotton Library*
House, in the Name and Family of the *Cottons*, for the Be- settled on that
nefit of the Publick, Family.

Recites, That an Agreement had been made by her Ma- 5 Ann. c. 30.
jesty with Sir *John Cotton* Bart. for the Purchase of *Cotton- Cotton-House*
House and Gardens for the Sum of 4500 l. and it is en- purchas'd by
acted that the said capital Messuage call'd *Cotton-House*, the Crown,
and the Gardens and Buildings us'd and enjoy'd with the
same, with their Appurtenances, shall be vested in her
Majesty, her Heirs and Successors, and that a convenient
Room should be built upon the Premises, where all the
Manuscripts, written Books, Papers, Parchments, Re-
VOL. II. L cords,

Trustees appointed to take care of the said Library,

for the Use of the Publick.

records, and other Memorials, as also all Coins, Medals, and other Rarities and Curiosities contain'd in the Cotton Library, shall be lodg'd, and there remain to all Posterity: Which Room shall be call'd by the Name of the Cottonian Library, and from the Building thereof, the said Library shall be manag'd and directed by the Lord Chancellor or Lord Keeper, the Honourable Robert Harley Esq; Principal Secretary of State, the Speaker of the House of Commons, for the time being, the Lord Chief Justice of the Queen's-Bench for the Time being, Sir Robert Cotton, Philip Cotton Esq; Robert Cotton Esq; and William Handbury Esq; and their Successors, as Trustees, for the Use of the Publick for ever; and in case any of the said last recited four Persons shall happen to die, the said Sir John Cotton, or other Heir Male of his Family for the Time being, shall nominate and appoint one or more fit Person or Persons for the Time being to succeed him or them, and supply the Place of him or them so dying, and so *toties quoties* as any of the said last four Trustees or others succeeding them shall happen to die. *Stat. 5 Ann. cap. 30.*

And the said Trustees shall make such Orders and Rules as they shall think proper for the reading and using and for the better Preservation of the same; and they, or the major part of them, shall appoint a sufficient Person, well read in Antiquities and Records, to have the Care of the said Library, who shall give Security to the Value of 500*l.* by Recognizance, with sufficient Sureties that none of the Books, Papers, &c. shall be lost or embezzell'd, and shall take the Oath in the Act specified for the preserving the same. *Ibid.*

Council-Board.

25 Ed. 3. c. 4. None to be imprison'd on by Indictment or Presentment, or by Process made by a Suggestion Writ original at the Common Law; and none shall be to the Council out of his Franchises or Freeholds unless he be duly brought to answer and fore-judg'd by Course of Law. *Stat. 25 Ed. 3. cap. 4. 42 Ed. 3. cap. 3.*

3 H. 7. c. 14. If any one admitted the King's sworn Servant, whose Name is put into the Checque Roll of his Household, and being under the Estate of a Lord, make any Conspiracies or Conspiracies with any Person to destroy the Life of one of the Council King, or any Lord of this Realm, or any Person sworn by a Servant of

of the King's Council, Steward, Treasurer, or Comptroller of the King's House, the said Steward, Treasurer, and Comptroller, or one of them, are impower'd to enquire by twelve discreet Persons of the Chequer Roll of the Offence, and if the Offender be convicted, he shall be adjudg'd guilty of Felony. *Stat. 3 H. 7. cap. 14.*

See the Precedency and Places of the Lords of the Privy Council in Parliament, &c. *Stat. 31 H. 8. cap. 10.* *31 H. 8. c. 10.*

It is declar'd, that neither the King nor the Privy Council have Authority by *English Bill*, Petition, Articles, Libel, or any other arbitrary way, to determine or dispose of Lands, Tenements, Hereditaments, or Goods and Chattels, of any Subject of this Kingdom. *Stat. 16 Car. 1. c. 10.*

And it is provided, that if any Person shall be committed, or restrain'd of his Liberty, by the Command or Warrant of the Council-Board, or of any of the Lords or others of the Privy Council, every Person so committed, upon Motion made in the King's Bench or Common Pleas in open Court, shall for the ordinary Fees usually paid have forthwith granted a *Habeas Corpus* to bring him before the Justices of such Court from whence the said Writs shall issue, and thereupon the Court within three Court Days after the Return made shall proceed to examine and determine whether the Cause of such Commitment be just and legal, and shall thereupon do what to Justice shall appertain, either by delivering, bailing, or dismissing the Prisoner, upon pain that every Judge, Justice, Officer, or other Person, acting contrary hereto, shall forfeit treble Damages to the Party griev'd, to be recover'd in the Courts at *Westminster*. *Ibid.*

No Person born out of the Kingdoms of *England*, *Scotland*, or *Ireland*, or the Dominions thereto belonging, altho' he be naturaliz'd, or made a Denizen, except such as be born of *English* Parents, shall be capable to be of the Council tho' Privy Council, a Member of either House of Parliament, naturalized, or to have any Office or Place of Trust, or any Grant of Lands from the Crown to himself, or any others in Trust Place, &c. for him. *Stat. 12 W. 3. cap. 2.*

After the 1st Day of May 1708. the Queen's Majesty, her Heirs and Successors, shall have but one Privy Council in *Great Britain*, which shall have the same Power as the Privy Council of *England* had at the Time of the Union, and no other. *Stat. 6 Ann. cap. 6.*

The Privy Council of her Majesty, her Heirs or Successors, shall not be dissolv'd by the Demise of the Crown, but continue to act six Months next after such Demise, unless Demise of the Crown.

unless sooner determin'd by the next Successor. *Stat. 6 Ann. cap. 7.*

9 Ann. c. 16. After the 1st of May 1711. any Person who shall unlawfully attempt to kill, or unlawfully assault, and strike or wound any Person being of the Privy Council when in the Execution of his Office of a Privy Counsellor in Council, or in any Committee of Council, the Offender shall be adjudg'd guilty of Felony without Benefit of Clergy. *Stat. 9 Ann. cap. 16.*

READINGS.

Anciently
twelve Privy
Counsellors.

The Privy Council is call'd *Concilium Regis, privatum Concilium, secretum & continuum Concilium Regis*, the Number of them is at the King's Will, but of ancient Time there were twelve, or thereabouts.

Penal to strike
in his Presence.

Such Honour was given to Counsellors of State heretofore, that if one did strike another in the House of a Privy Counsellor, or elsewhere in his Presence, he was fin'd. *4 Inst. 53.*

Duty of a
Privy Coun-
sellor in his
Oath.

The Duty of a Privy Counsellor is contain'd in his Oath, which Sir *Edward Coke* has given us in his 4th Institutes, *Fol. 54.*

1. That he shall, as far forth as Cunning and Discretion suffereth, truly, justly, and evenly, counsel and advise the King in all Matters to be commoned, treated, and demean'd, in the King's Council, or by him as the King's Counsellor. *Ibid.*

2. Generally in all things that may be to the King's Honour and Behoof, and to the Good of his Realms, Lordships, and Subjects, without Partiality or Exception of Persons, not leaving or eschewing so to do for Affection, Love, Meed, Doubt, or Dread, of any Person or Persons. *Ibid.*

3. That he shall keep secret the King's Council, and all that shall be common'd by way of Council in the same, without that he shall common it, publish it, or discover it, by Word, Writing, or in any otherwise, to any Person out of

of the same Council, or to any of the same Council, if it touch him, or if he be Party thereof. *Ibid.*

4. That he shall not for Gift, Meed, nor Good, ne Promise of Good, by him, nor by mean of any other Person, receive or admit for any Promotion, favouring, nor for declaring, letting or hindring of any Matter or Thing to be treated or done in the said Council. *Ibid.*

5. That he shall with all his Might and Power help and strengthen the King's said Council in all that shall be thought to the same Council for the universal Good of the King and his Land, and for the Peace, Rest, and Tranquillity of the same. *Ibid.*

6. That he shall withstand any Person or Persons, of what Condition, Estate, or Degree, they be of, that would by way of Feat attempt or intend the contrary. *Ibid.*

7. And generally, that he shall observe, keep, and do all that a good and true Counsellor ought for to do unto his Sovereign Lord. 4 *Inst.* 54.

By Force of which Oath, and the Custom of the Realm, he is a Privy Counsellor, without any Patent or Grant during the Life of the King. *Ibid.*

Every Privy Counsellor had a Voice in the Star-Chamber when that Court was in being.

If a Privy Counsellor be a Commoner he has Precedence of all Baronets, Knights, and younger Sons of Barons, and Viscounts.

The Members of the Council sit bare when his Majesty presides, and the lowest delivers his Opinion first, and the King declares his Judgment of the Matter last, which determines the Debate.

The Kingdom of *Ireland* and the Plantations *Ireland* and are in many Respects subject to the Controul, the Plantation and under the Direction, of the Privy Council of *Ireland* and *Great Britain*. The Lord Lieutenant and great the Inspection Officers of the Kingdom of *Ireland* are appointed of the Privy by his Majesty, with the Advice of his Privy Council. Council; and no Bill can be brought into the *Irish Bills* and
 Par- proved here

before read in Parliament. **Parliament of Ireland** until it has first had the Approbation of the Privy Council here. And the **Plantation Laws** ratify'd here. **Laws ratify'd** firm'd in the Privy Council, their Governors also are appointed by the Council, and responsible to it for their Behaviour.

Authority of Orders of Council and Proclamations in England. Acts of the Privy Council, whether Orders or Proclamations, were heretofore of great Authority in *England*, and in the Reign of *H. 8.* that King procur'd an Act of Parliament to be made, that with the Advice of his Privy Council he might set forth Proclamations, which should be of the Force of an Act of Parliament, which was repealed in the Reign of *Ed. 6.* but still Acts of the Privy Council continued of great Authority until the Reign of King *Charles 2.* when we find several Proclamations and Orders of Council for demolishing Houses built upon new Foundations in and about the Cities of *London* and *Westminster*, for removing and demolishing other Houses which were deem'd a Nuisance to the Court, for erecting Monopolies, suspending penal Laws, &c. but the Authority of such Acts of State having been question'd, are now in a great measure disus'd, and Orders of Council and Proclamations are at this Day issued chiefly to put the Laws and Statutes in Execution, or for appointing Days of Fasting or Thanksgiving, and some have question'd their Authority in this last Article.

A Privy Counsellor is seldom formally dismiss'd, but only left out and not summoned to Council when the Prince does not think fit to make use of him in that Quality any longer.

A Contempt to refuse to be examin'd before the Council where the State is concern'd, and finable. In the Star-Chamber the 15th *Jac. 1.* the Countess of *Shrewsbury*, Dowager of Earl *Gilbert*, was fin'd ten thousand Pounds and committed to the Tower, for that being call'd to the Council-Table, and interrogated what she knew, or had heard, or thought, of a suppos'd Child which it was rumour'd that the Lady *Arbella* should have had, she refus'd obstinately to make any Answer; for it was judg'd that this was a Question of State, for there is not one thing that doth more concern

concern the Peace of a Kingdom than the Certainty of the Royal Line, insomuch as supposititious Persons have rais'd as great Commotions and Troubles in States as the Discords of true Heirs and Descendants, as in the Case of *Perkin Warbeck* here at Home, and counterfeit *Sebastian of Portugal*, and many others; and so this was an Examination proper for the Council-Table, and of their Jurisdiction and Cognizance; and therefore to deny to satisfy the King and State in a Point wherein they are so nearly interested, is to deny a Part of Allegiance, which requires all Duties that tend to the Good and Preservation of the State, and that no less for the future than the present Time. This Lady was the more press'd to answer this Matter, because being more familiar and inward with the Lady *Arbella* than any other, she must needs have falsify'd the Rumor; for all Men of Understanding, (says Sir *Henry Hobart*,) held it to be untrue. *Hob. 235.*

The Attorney-General, the 16 *Jan. 1.* inform'd A Contempt to reveal an Examination in Councils against Sir *John Hollis* Lord *Houghton*, for that upon a Petition exhibited against him to the King by Sir *Edward Coke* for stirring up one to scandalize and sue him in the Star-Chamber. The King referr'd the Examination of it to four of the Lords of the Council, who having call'd and examin'd him, did thereupon enjoin him upon his Allegiance that he should disclose nothing that had pass'd in his Examination, and that yet he had in Contempt of that Command disclos'd some of it to such and such, and nam'd to whom, to instruct and prepare them to suppress the Truth.

To this the Lord *Houghton* demurr'd in Law, and assign'd for Cause, that this Command was not binding because it was not as from the Body of the Council, but from particular Committees for one special Purpose. But the Demurrer was over-ruled, first, materially, in that the Preparation of Witnesses to suppress Truth is a full Charge of it self, fit for the Star-Chamber, and to be answer'd. And it was farther condemn'd

as Presumption, to weaken the Action of a select Number of Counsellors chosen and appointed by the King himself, and therefore Serjeant *Ashley* and *Hughes* of *Grays Inn*, that were of his Counsel, were order'd at the Council Table to make a Submission, which they did.

No Contempt where it does not concern the State.

But touching the enjoining Secrecy upon Allegiance in this Case, I deliver'd my Opinion publicly in my Sentence, that the Obligation of Allegiance was not to be applied nor laid upon private Causes, for no Man could make a Cause of Allegiance other than such as the Law makes, and as concern the Faith and Loyalty that the Subject oweth to his Sovereign in Points of State. *Hob.* 271, 272.

Counterfeits.

33 H. 8. c. 1.
Defrauding
others by
counterfeit
Letters or Tokens.

To be punished arbitrarily,
except Pains of Death.
Offender to be committed by two Justices of Peace.

IF any Person shall falsely and deceitfully obtain or get into his or their Hands or Possession, any Money, Goods, Chattels, Jewels, or other Things, of any other Persons, by Colour and Means of any false Token or Counterfeit Letter made in any other Man's Name, and be convicted thereof before the Lord Chancellor, Justices of Assize, or Justices of Peace, in their general Sessions, or in any Court of Record, he shall suffer such Correction and Punishment by Imprisonment, setting upon the Pillory, or otherwise, by any Corporal Pain, except Pains of Death, as shall be adjudg'd by the Persons before whom he shall be so convicted. *Stat.* 33 H. 8. c. 1.
Justices of Assize, or any two Justices of Peace in every County, (*Quor. Un.*) are authorized to convene such Offenders before them, and commit or bail them till the next Assizes or general Sessions. *Ibid.*

Provided that Justices of Peace in Corporations and Franchises, shall have like Jurisdiction as Justices of Peace in the Counties, to put this Act in Execution, saving to the Party grieved by such Deceit, such Remedy by Action and other Ways, as he might have had before this Act. *Ibid.*

READINGS.

It was the Opinion of Sir *Edward Coke*, that Whether a
 upon this Statute the Offender could not be fin'd, Fine may not
 and that only Corporal Pains ought to be inflict- be impos'd on
 ed upon him. 3 *Inst.* 133. But we find it other- the Offender.
 wise in *Terrey's Case*, who was a Merchant, and
 indicted upon the aforesaid Statute of 33 *H. 8.*
 of false Tokens, because that he by a false Note
 in the Name of *John du Boys*, obtain'd into his
 Hands a Wedge of Silver, of the Value of two
 Hundred Pounds: The Defendant being found
 guilty, Exception was taken against the Indict-
 ment, for Variance therein in several Words from
 the Statute; but because there was not any Reci-
 tal nor Mis-recital of the Statute, but it was on-
 ly an Inducement to the setting down thereof,
 and not in any Point material, the Court resol-
 ved it to be good enough, and thereupon it was
 adjudg'd that he should stand upon the Pillory, in
Cheapside, and in *Cornhill* near the *Exchange*, up-
 on the *Saturday* following, and should pay a Fine
 to the King of five Hundred Pounds, and be im-
 prisoned during the King's Pleasure, and be bound
 with good Sureties for his good Behaviour. *Cro.*
Car. 407.

The deceitful receiving of Money from one Deceiving one
 Man to another's Use, upon a false Pretence of by a false Mes-
 having a Message and Order to that Purpose, is sage not pu-
 not punishable by a Criminal Prosecution, be- nishable by a
 cause it is accompanied with no manner of artful Criminal Pro-
 Contrivance, but only depends on a bare naked secution.
 Lie, and it is said to be needless to provide severe
 Laws for such Mischiefs, against which common
 Prudence and Caution may be a sufficient Securi-
 ty. *Hawk.* 188. 6 *Mod.* 105.

Courts.

9 H. 3. c. 29. **W**E will sell to no Man, we will not deny or defer to any Man either Justice or Right. *Magna Charta*
9 H. 3. cap. 29.

52 H. 3. c. 1. All Persons, as welof high as of low Estate, shall receive Justice in the King's Court, and none shall take any done to all, in Revenge or Distress of his own Authority, without Award the King's of our Court, upon pain of being punish'd by Fine according to the Trespass. 52 H. 3. cap. 1.
Courts.

52 H. 3. c. 2. None shall distrain any to come to his Court, which No Distresses is not of his Fee, or upon whom he hath no Jurisdiction, out of the Ju- by reason of Hundred or Bailiwick, nor shall take Distresses out of the Fee or Place where he hath no Baili-
risdiction. strices out of the Fee or Place where he hath no Baili-
wick or Jurisdiction, on pain of being punish'd in the like manner. Stat. 52 H. 3. cap. 2.

52 H. 3. c. 19. In Counties Hundreds, Court Barons, or other Courts, Oaths. none shall need to swear to warrant his Essoin. Stat. 52 H. 3. cap. 19.

2 Ed. 3. c. 8. It shall not be commanded by the Great Seal, nor the The Courts Little Seal, to disturb or delay Common Right, and of Law to though such Commandments do come, the Justices shall proceed, and not therefore leave to do Right in any Point. Stat. 2 Ed. 3.
not to regard cap. 8.

any Com- The Justices of whatsoever Place, shall not let to do mands to the the Common Law by Commandment, which shall come contrary. to them under the Great Seal or Privy Seal. Stat. 14
14 Ed. 3. c. 14. Ed. 3. cap. 14.

18 Ed. 3. Oath Ye shall swear that well and lawfully ye shall serve our of the Judges Lord the King and his People, in the Office of Justice, 20 Ed. 3. c. 1. and that lawfully ye shall counsel the King in his Busi-
and their Du- ness, and that ye shall not counsel nor assent to any thing, 17. which may turn to his Damage or Disherison, by any Manner, Way, or Colour; and that ye shall not know the Damage or Disherison of him, whereof ye shall not cause him to be warn'd by your self or by other; and that ye shall do equal Law and Execution of Right to all his Subjects, rich and poor, without having Regard to any Person; and that ye take not by your self or by other, privily nor apertly, Gift or Reward of Gold nor Silver, nor of any other thing which may turn to your Profit, unless it be Meat or Drink, and that of small Value, of any Man that shall have any Plea or Process hanging before you, as long as the same Process shall so be hanging, nor after for the same Cause; and that ye take no Fee as long as ye shall be Justice, nor Robes of any

any Man great or small, but of the King himself; and that ye give none Advice nor Counsel to no Man, great nor small, in no Case where the King is Party; and in case that any of what Estate or Condition they be, come before you in your Sessions, with Force and Arms or otherwise, against the Peace or against the Form of the Statute thereof made to disturb Execution of the Common Law, or to menace the People that they may not pursue the Law, that ye shall cause their Bodies to be arrested and put in Prison; and in case they be such that ye cannot arrest them, that ye certify the King of their Names and of their Misprision hastily, so that he may thereof ordain a convenient Remedy. And that ye by your self, nor by other privily nor apertly, maintain any Plea or Quarrel hanging in the King's Court, or elsewhere in the Country. And that ye deny to no Man Common Right by the King's Letters, nor none other Man's, nor for none other Cause. And in case any Letters come to you contrary to the Law, that ye do nothing by such Letters, but certify the King thereof, and proceed to execute the Law notwithstanding the same Letters; and that ye shall do and procure the Profit of the King and of his Crown with all things where ye may reasonably do the same. And in case ye be from henceforth found in Default in any of the Points aforesaid, ye shall be at the King's Will, of Body, Lands, and Goods thereof, to be done as shall please him. *At God you help and All-Saints.* Stat. 18 Ed. 3. Oath of the Justices, 20 Ed. 3. cap. 1.

Neither Letters of the Signet nor of the King's Privy Seal shall be sent in Damage or Prejudice of the Realm, nor in Disturbance of the Law. Stat. 12 R. 2. cap. 10.

All Jurisdiction, Power, and Authority, belonging to, or exercis'd in, the Court call'd the Star-Chamber, shall be absolutely dissolv'd, taken away, and determin'd; and the like Jurisdiction exercis'd in the Court before the President and Council in the Marches of Wales, and in the Court before the President and Council in the North, and in the Court of the Dutchy of Lancaster, and in the Court of Exchequer of the County Palatine of Chester, shall be also repeal'd, revoked, and made void; and no Court shall be erected hereafter with like Jurisdiction. Stat. 17 Car. 1. cap. 10.

And it is enacted and declar'd that neither the King nor his Privy Council have, or ought to have, any Jurisdiction, Power, or Authority, by English Bill, Petition, Court, to exercise like Jurisdiction. Privy Council not to determine the Subjects Property.

Articles,

Articles, Libel, or any other arbitrary way, to examine or draw into question, determine, or dispose of, the Lands, Tenements, Hereditaments, Goods or Chattels, of any Subject; but the same ought to be determin'd in the ordinary Courts of Justice. *Ibid.*

17 Car. 1. c. 11. The Clause of the Act of the 1 Eliz. cap. 2. empowering the Queen by Letters Patents to authorize such Permission Court sons as she shall think fit to exercise ecclesiastical Jurisdiction, is repeal'd and made void. Stat. 17 Car. 1. cap. 11.

12 Car. 2. c. 24. The Court of Wards and Liveries, and all Ward-Court of ships, Liveries, Primer Seisins, and *Ouster le Mains*, Values and Forfeitures of Marriages, by reason of any Tenure of the King, or any other, by Knights-Service are taken away and discharg'd. Stat. 12 Car. 2. cap. 24.

13 Car. 2. c. 12. The abovesaid Statute of 17 Car. 1. cap. 11. as far as it concerns the taking away the High-Commission Court, is hereby confirm'd. Stat. 13 Car. 2. c. 12.

Provided nevertheless, that this Act shall not extend to abridge or diminish the King's Supremacy in Ecclesiastical Affairs. *Ibid.*

1 W. & M. c. 27. Whereas by a Clause in the Statute of 34 & 35 H. 8. Court of the cap. 26. it is enacted that there shall remain a President and President and Council in the Principality of *Wales*, and in the Marches Council of the of the same, to hear and determine such Causes as shall be assign'd them by the King, as had been accusom'd, forasmuch as the Proceedings of that Court hath been found burthensome to the Subject, contrary to the great Charter, &c. it is enacted that the said recited Clause shall be repealed, and the Jurisdiction and Authority of the said Court absolv'd and determin'd. Stat. 1 W. & M. cap. 27.

READINGS.

Of Courts in general.

Court *Curia* is a Place where Justice is judicially administred. 1 *Inst.* 58. And is deriv'd a *Cura quia est Locus ubi publicas Curas gerebant*, according to Sir *Edward Cook* in his Preface to his 4th Institutes.

Of these Courts some be of Record, and some not of Record, some to enquire, hear, and determine, and some to enquire only; and every Court of Justice hath Laws and Customs for its Direction, some are govern'd by the Common and Statute Law, some by the Civil and Canon

non Law, and some by peculiar Laws and Customs. 4 *Inst.* 15.

The King hath committed all his Power judicial to one Court or other, and if any Man would render himself to the Judgment of the King in such Cases where he hath committed all his Power judicial to others, such a Render would be to no effect. The King hath wholly left it to his Judges in the respective Courts to judge according to Law. 4 *Inst.* 71.

The King hath delegated his Civil Power to the respective Courts.

And albeit it be enacted that the Delinquent shall be fin'd at the Will of the King, *Non Dominus Rex in Camera sua*, says Sir Edward Coke, *nec aliter nisi per Justiciarios suos, (finem imponit) & hec est Voluntas Regis, viz. per Justiciarios & Legem suam unum est dicere. Ibid.*

Fines to be imposed by the Courts of Justice, and not by the King.

Record, *Recordum*, is a Memorial or Remembrance in Rolls of Parchment of the Proceedings and Acts of a Court of Justice which hath Power to hold Plea according to the Course of the Common Law of real or mixt Actions, or of Actions *quare vi & armis*, or of personal Actions whereof the Debt or Damage amounts to 40 s. or above; these are call'd Courts of Record, and are created by Parliament, Letters Patents, or prescription. 1 *Inst.* 260.

Courts of Record.

And the Rolls, being the Records or Memorials of the Judges of the Courts of Record, import in them such incontrollable Credit and Verity, as they admit no Averment, Plea, or Proof, to the contrary; and if such a Record be alledg'd, and it be pleaded that there is no such Record, it shall be tried only by it self; and the Reason hereof is apparent, for otherwise there should never be any end of Controversies, which would be inconvenient. During the Term wherein any judicial Act is done the Record remaineth in the Breast of the Judges of the Courts, and in their Remembrance, and therefore the Roll is alterable during that Term as the Judges shall direct; but when that Term is past, then the Record is in the Roll, and admitteth no Alteration,

No Averment against a Record.

Record may be alter'd during the Term, but not after.

tion, Averment, or Proof, to the contrary
1 *Inst.* 260.

Courts not of
Record.

Incidents to
the Grant of
a Court.

Every Court of Record is the King's Court, albeit another may have the Profit, wherein if the Judges do err, a Writ of Error doth lie; but the County Court, the Hundred Court, the Court Baron, and such like, are no Courts of Record, and therefore the Proceedings therein may be denied and tried by Jury, and upon their Judgments a Writ of Error lieth not, but a Writ of false Judgment, for that they are no Courts of Record because they cannot hold Plea of Debt or Trespass if the Debt or Damages do amount to 40 s. or of any Trespass *vi & armis.* 1 *Inst.* 117.

If the King grants a Court by Letters Patents to a Corporation of a Town to hold Pleas, &c. in this Case, tho' there is not any Clause in the Patent to make a Bailiff or Serjeant to execute the Process of the Court, and to return Juries, &c. yet it is incident to their Grant to do it, for otherwise they cannot hold a Court. *Mich.* 14 *Car. B. R.* in *Metcalse* and *Worsely's* Case, *per Curiam* agreed.

But upon such Grant of a Court, if there be not any Clause in the Patent to make a Bailiff to execute Writs of Enquiry of Damages if a Judgment is given by which a Writ of Enquiry of Damages is to be granted, this ought to be returnable in Court, and there the Enquiry ought to be made, for the Bailiff cannot execute it, inasmuch as he cannot execute it without giving an Oath to the Jury and Witnesses, which the Letters do not give him Power to do, for this is not necessarily imply'd on the Grant of the Court, inasmuch as it may be done in Court. *Mich.* 14 *Car. 2. B. R.* between *Metcalf* and *Worsely*, *per Curiam* in a Writ of Error out of an inferior Court, and the first Judgment reversed accordingly. 2 *Danv.* 257.

What Customs the
Courts at
Westminster are

Every Court of *Westminster* ought to take notice of the Customs of other Courts, of *Westminster* so of the Courts of *Wales*, and they may inform themselves thereof by Presidents, and by

Certi-

Certificates from the Judges. *Cro. Eliz.* 503, to take notice of.
1 *Sydf.* 331.

If a Judgment is given in *London*, and it comes in *B. R.* by Error, the King's-Bench must take notice of the Customs of *London*, but otherwise it is of inferior Courts. 2 *Danv.* 254.

If Administration be granted to *B.* of the Goods of *A. durante minore Etate* of *C.* and it appears in Pleading that *C.* is of the Age of 17. the Court ought to take notice of the ecclesiastical Law that the Administration is void and determin'd. *Mich.* 14 *Car. B. R.* between *Damporte* and *Pincen.* 2 *Danv.* 256. Of Ecclesiastical Laws.

If the ecclesiastical Court gives Sentence in a Matter of which they have Conusance, tho' against the Reason of the Common Law, yet the Judges of the Common Law ought to give Credit thereto, and believe it consonant with the Law of holy Church. 4 *Co.* 29. a. 7 *Co.* 43. *Vid.* 1 *Roll. Abr.* 530.

A Court of Equity upon the Circumstances may adjudge of a Fraud, tho' in a Court of Law the Fraud is a Matter of Fact and must be found by the Jury. 2 *Danv.* 253. Courts of Equity adjudge of Frauds, but not Courts of Law.

The Court of Admiralty is not a Court of Record, and therefore no Recognizance can be taken there. 2 *Danv.* 259. *Qu.*

The *English* Court of Chancery proceeding upon a *Subpœna*, and by way of Decree, is no Court of Record. *Ibid.*

The King cannot create a Court of Equity but the same must be by Act of Parliament or Prescription time out of mind, but the King may grant Power *tenere placita*, or Conusance *de plea*, for all must judge according to the Rule of the Common Law. 4 *Inst.* 87, 97.

County Courts.

Mag. Chart.

9 H. 3. c. 33.

County

Courts to be

held from

Month to

Month.

3 Ed. 1. c. 33.

Barretry not

to be suffer'd

in County

Courts.

11 H. 7. c. 15.

How Plaints

shall be enter'd

in the County

Court.

Justice of

Peace may

convict the

Sheriff of

fraudulent

Practice.

Bailiff not do-

ing his Duty

to forfeit 40 s.

3 Ed. 6. c. 25.

7 & 8 W. 3.

c. 25.

County

Courts to be

NO County Court shall be holden but from Month to Month, and where greater Time hath been us'd, there shall be greater. *Mag. Chart. 9 H. 3. cap. 35.*

No Sheriff shall suffer Barretors or Maintainers of Quarrells in their Shires, nor Stewards of great Lords, or other, unless he be Attorney for his Lord to make Suit or give Judgment in the Counties, or to pronounce Judgments, if he be not specially required by all the Suitors, on pain that both the Sheriff and such other Offenders shall be grievously punished. *Stat. 3 Ed. 1. cap. 33.*

No Sheriff, Under-Sheriff, or Shire-Clerk, shall enter any Plaint in the County Court but where the Plaintiff or his Attorney are present, and the Plaintiff shall find Pledges to pursue his said Plaint, and shall have but one Plaint for one Trespas or Contract. And if the said Sheriff, &c. enter any more Plaints than the Plaintiff supposeth, he hath Causes of Action against the Defendant, he shall forfeit for every such Offence 40 s. to be divided between the Crown and the Prosecutor, to be recover'd by Action of Debt, &c. in the Exchequer. And the Justices of Peace, and every of them, upon Complaint made by the Party griev'd, are impower'd to examine the said Sheriffs, &c. and if they shall find Default in the said Sheriffs, &c. in entering of the said Plaints deceitfully, such Offender shall be convicted and attainted thereof without farther Enquiry, and forfeit 40 s. to the Use of the Crown for every Offence. And the said Justices of Peace shall certify such Examination within a Quarter of a Year into the Exchequer on pain of 40 s. And the said Sheriff, &c. shall make a sufficient Precept to the Bailiff of the Hundred to attach, summon, or warn, the Defendants to appear and answer the said Plaints; and if there be any Default in the Bailiff in warning the Defendants to appear, &c. he shall forfeit 20 s. to the Crown for every Offence, and may be convicted thereof by the Examination of any Justice of Peace as aforesaid. *Stat. 11 H. 7. cap. 15.*

No County Court shall be deferr'd above one Month from Court to Court, but shall be held every Month, and no otherwise. *Stat. 3 Ed. 6. cap. 25.*

Upon every Election to be made of a Knight of a Shire to serve in Parliament, the Sheriff shall hold his County Court at the most publick and usual Place of Election within the County, and where the same hath most

usually been for 40 Years past, and shall there proceed to held at the Election at the next County Court, unless it fall out usual Place. to be held within six Days after the Receipt of the Writ, Elections of or upon the same Day, and then he shall adjourn the Members of Court to some convenient Day, giving ten Days notice of Parliament the Time and Place of Election. Stat. 7 & 8 W. 3. when to be made. cap. 25.

All County Courts after the 25th of March, 1696: to be County held for the County of York, or any other County Courts, Courts to be which heretofore us'd to be held on a Monday, shall be held on a call'd and begun on a Wednesday, and no otherwise. Ibid. Wednesday.

Provided that the Sheriff of the County of Southampton, Southampton: or his Deputy, at the Request of one of the Candidates for Election of a Knight for that County, shall adjourn the Poll from Winchester, after every Freeholder there present has poll'd, to Newport in the Isle of Wight. Ibid.

READINGS.

The Word *County* is fetch'd from the *French*, County why and *Shire* from the *Saxon*; for *Scyran* in the so call'd. *Saxon* Tongue signifieth to divide, and every County or Shire is divided and parted by certain Metes and Bounds from another. In *Latin* it is call'd *Comitatus a Comitando*, from accompanying together. Co. Lit. Sect. 61.

Sir Edward Coke has cited several Authorities When the to shew that the Kingdom was divided into Shires Kingdom was or Counties by the Britons, and that King Alfred's Division of Shires and Counties was but a thus divided. Renovation, or more exact Description of the same. Co. Lit. Sect. 248. Sed quare.

This Court holdeth no Plea of any Debt or What the Damages to the Value of 40 s. or above, nor of County Court any Trespass done *vi & armis*, because a Fine is holds Plea of: due thereby to the King; but of Debt, Detinue, Trespass, and other Actions personal above 40 s. the Sheriff may hold Plea by Force of a Writ of *Justicies* to him directed, for that is in Nature of a Commission to him, and is *Vicontiel*, and not returnable. 4 Inst. 266.

This Court is no Court of Record, and the No Court of Suitors are the Judges thereof; but in a Redif- Record: feison the Sheriff is Judge by the Statute of Mer-

ton, cap. 3. and a Writ of Error lieth of his Judgment. *Ibid.*

Pledges are now disus'd in this Court, and were required formerly only where the Plaintiff lived out of the County. *Greenwood* 11.

Manner of
proceeding in
the County
Court.

The Plaintiff in this Court first takes out a Summons returnable at the next County Court, and if the Defendant do not appear, an Attachment or *Distringas* is to be made out; but if the Defendant appears, the Plaintiff is to file his Declaration, shewing his Cause of Action, or Matter of Complaint, in what manner the Action accrued, at what Time and Place the Wrong was done, and the Damage he has sustain'd. *Ibid.*

If the Defendant doth appear, and the next Court after gives a Rule to declare, and the Plaintiff doth not file his Declaration within the Time, he may be nonsuited. *Ibid.*

When the Plaintiff hath declar'd he must continue his Suit from Court Day to Court Day, or the Defendant may take Advantage of it; and this is call'd a Continuance, being an adjourning of the Suit from time to time to keep it on foot. *Ibid.*

The Rule, or *Dieu datus*, is when farther Day is given to the Plaintiff to declare, or the Defendant to plead, and the Time given is usually to the next Court Day, but upon occasion may be enlarg'd. *Ibid.*

The next Court after filing the Declaration, and Imparlance given, the Defendant is to put in his Answer or Plea, and if the Plaintiff join Issue, they may proceed to Trial the next Court Day, if they proceed not farther by Replication, Rejoinder, Surrejoinder, &c.

Plaints in the County Court are entred in this manner.

A. B. *queritur de C. D. de placito debiti* 39 s. 11 d. or A. B. *queritur de C. D. de placito transgr. super Casum ad dampnum ipsius A. triginta & novem Solidorum.*

Where a Verdict is given for the Plaintiff, and Judgment enter'd thereupon, a *Fieri Facias* may

maybe awarded against the Defendant's Goods, which may be taken by virtue thereof, and apprais'd and sold to satisfy the Plaintiff; but if the Defendant hath no Goods whereupon a Levy may be made, the Plaintiff remains without Remedy in this Court, for it being no Court of Record, no *Capias* lies there, but an Action may be brought at Common Law upon the Judgment entered'd. *Greenwood 22.*

Causes are removed out of this Court by a Writ of *Recordare*, which issues out of the Chancery, directed to the Sheriff, commanding him to send the Plaintiff that is before him in his County Court (without Writ of *Justicies*) into the Court of Kings Bench or Common Pleas, to the end that the Cause may be there determin'd. And the Sheriff is hereupon to summon the other Party to be in that Court (into which the Plaintiff is to be sent) at a Day certain. And of all this he is to make a Certificate under his own Seal and the Seals of the four Suitors of the same Court.

Causes removed from the County Court by *Recordare*.

Note, That tho' the Plea be discontinued in the County, yet the Plaintiff or Defendant may remove the Plaintiff into the Common Pleas or King's-Bench by a *Recordare*, &c. and it shall be good, and he shall declare upon the same. And the Court shall hold Plea upon the same Plaintiff, for if the Plaintiff be continued in the County, and Issue join'd upon it, yet nothing shall be removed but only the Plaintiff, and in the Common Pleas the Plaintiff may declare a-new, &c.

Likewise if the *Recordare* bear Date before the Plaintiff was entered in the County it is good enough, and the Record is well removed. *Greenwood 57, 58.*

Causes are also removed by *Pone*. A *Pone* does not differ from a *Recordare* any otherwise than as it is to remove such Suits as are before the Sheriff by Writ of *Justicies*, and not by Plaintiff only. A *Recordare* is to remove the Suit that is by Plaintiff only without Writ. *F. N. B. 70.*

By *Pone*.

A Writ of *Procedendo* lieth where a Cause hath been formerly removed by *Pone* or *Recordare* from

Writ of *Procedendo*.

Writ of false
Judgment.

from the County Court into the King's Bench or Common Pleas, and for want of sufficient Cause of Removal is sent back again. *F. H. N. B.* 50.

A Writ of false Judgment lieth where an erroneous Judgment is given in this Court, (being no Court of Record) then the Party griev'd by the Judgment may have this Writ, and remove all Process of the Suit into the Common Bench, and there it shall be examin'd; if it be found erroneous, the Judgment shall be revers'd, and the Suitors of the Court who gave the Judgment amerc'd.

See *Greenwood of Courts for the farther Proceedings in the County Courts.*

Court Leet.

9 H. 3. c. 35.
Magna Charta.
52 H. 3. c. 10.
Marlbe.

THE View of Frankpledge shall be at the Feast of St. Michael yearly. *Stat.* 9 H. 3. cap 35.

Archbishops, Bishops, Abbots, Priors, Earls, Barons, nor any religious Men or Women, need not come to the Sheriffs Torn, and they that have Hundreds of their own shall not be bound to appear at any such Torns but in the Bailiwicks where they be dwelling. *Stat.* 52 H. 3. cap. 10.

Statute for
View of
Frankpledge.
18 Ed. 2.
Enquiries at
Court Leet.

Stewards of Leets shall enquire, 1. If all the Jurors that owe Suit to the Court be come, and which not.

2. And if all the chief Pledges or their Dozeins be come as they ought to come, and which not.

3. And if all the Dozeins be in the Affize of our Lord the King, and which not, and who receiv'd them.

4. And if there be any of the King's Villains fugitive dwelling elsewhere than in the King's Demeans, and of such as be within the King's Demeans, and have not abiden a Year and a Day.

5. And if there be any of the Lords Villains in Frankpledge elsewhere than in this Court.

6. Of Customs and Services due to this Court withdrawn, how, and by whom, and in what Bailiffs Times.

7. Of Purprestures made in the Lands, Woods, and Waters. to Annoyance.

8. Of Walls, Houses, Dikes, and Hedges, set up or beaten down to Annoyance.

9. Of

9. Of Bounds withdrawn and taken away.
10. Of Ways and Paths open'd or stopp'd.
11. Of Waters turn'd or stopp'd, or brought from their right Course.
12. Of Breakers of Houses and of their Receivers.
13. Of common Thieves and of their Receivers.
14. Of Petty Larons, as of Geese, Hens, or Sheafs.
15. Of Thieves that steal Cloths, or of Thieves that do pilfer Cloths through Windows and Walls.
16. Of such as go in Message for Thieves.
17. Of Cries levied and not pursued.
18. Of Bloodshed, and of Frays made.
19. Of Escapes of Thieves or Felons. 18 Ed. 2.
20. Of Persons outlaw'd return'd not having the King's Warrant.
21. Of Women ravish'd not presented before the Coroners.
22. Of Clippers and Forgers of Money.
23. Of Treasure found.
24. Of the Assize of Bread and Ale broken.
25. Of false Measures, as of Bushels, Gallons, Yards, and Ells.
26. Of false Balances and Weights.
27. Of such as have double Measure, and buy by the great and sell by the less.
28. Of such as continually haunt Taverns, and no Man knoweth whereon they do live.
29. Of such as sleep by Day and watch by Night, and fare well, and have nothing.
30. Of Cloth-Sellers, and Curriers of Leather, dwelling out of Merchant Towns.
31. Of such as fly unto Church or Church-Yard, and after depart without doing that which belongeth thereunto.
32. Of Persons imprison'd and afterwards let go without Mainprize.
33. Of such as take Doves in Winter by Door-falls or Engines.

No Steward, Deputy-Steward, or other Under-Steward, 1 Jac. 1. c. 5. of any Court Leet shall directly or indirectly take, receive, Steward to or make Benefit, to his own Use in Money, Goods, or take nothing any other thing, to the Value of 12 d. by virtue or co- belonging to lour of any Demise or Grant of any the Profits, or the Lord. Perquisites, or Amercements, of any such Courts which rightfully shall belong to the Lord, on pain of 40 l. for every Offence, and of being disabled of being Steward of such Court or of any other, one Moiety of the For-

feitures to the Crown, and the other to the Prosecutor,
Stat. 1 Jac. 1. cap. 5.

READINGS.

Leet whence
deriv'd.

Leet is a Court deriv'd out of the Sheriffs Turn, and enquireth of all Offences under the Degree of High-Treason that are committed against the Crown and Dignity of the King; but those Offences which are to be punish'd with Loss of Life or Member, are only enquirable there, and to be certify'd over to the Justices of Assize, *Terms of Law. Verb. Leet.*

Before the Institution of a Leet every Freeman when he was twelve Years old was bound to take the Oath of Allegiance in the Turn, and after the Leet was establish'd, then he was bound to take it within that particular Precinct; and if he could not then find Pledges for his Truth to the King and the People, he was to be committed till he could.

When to be
held.

He that claims a Leet by Charter must hold it at the same Days which are contain'd in the Charter, and he that claims it by Prescription may claim to hold it once or twice every Year at any such Days as shall upon reasonable Warning be appointed, if the Usage hath been so that it hath been kept at uncertain Times, or else it ought to be kept at such certain Days and Times as by Prescription hath been certainly used, *2 Inst. 72.*

Why or-
dain'd.

The View of Frankpledge was ordain'd for two Ends. 1. *Quod Pax nostra teneatur.* 2. *Quod Trithinga teneatur integra.*

Every Resiant
to swear Alle-
giance at
twelve Years
of Age, and

Quod Pax nostra teneatur, that is, says Sir Edward Coke, Let the View of Pledges or Sureties for Freemen be made so that our Peace may be holden. Now the Institution thereof for the keeping of the King's Peace was, that every Freeman at his Age of 12 Years should in the Leet (if he were in any) or in the Tourn, (if he were not in any Leet) take the Oath of Allegiance to the King,

King, and that Pledges or Sureties should be found for his Truth to the King and to all his People, or else to be kept in Prison. This Frankpledge consisted most commonly of ten Households, which the Saxons call'd *Theothungh*, in the North Parts they call them *Tenmentale*, in other Places of England *Tithing*; here in this Chapter *Tri-thinga* is *Decemvirale Collegium*, whereof the Masters of the nine Families (who were bound) were of the Saxons call'd *Freoborh*, which in some Places is to this Day call'd Free-Barrow, *i. e.* Free-Surety or Frankpledge; and the Master of the tenth Household was by the Saxon call'd by divers Names, *viz. Theothungmon*, to this Day in the West call'd Tythingman, and *Tihenheofod*, and *Freoborhor*, *i. e. Capitalis Plegius*, Chief Pledge;

and these ten Masters of Families were bound one for another's Family, that each Man of their several Families should stand to the Law, or if he was not forth coming, that they should answer for the Injury or Offence by him committed. *2 Inst. 73.*

The Precinct of this Frankpledge was call'd *Decenna*, because it consisted of ten Households, as has been said, and every Man of these several Households were call'd *Decennarii*, and every Man was oblig'd to be of some *Decenna* or other. *Ibid.*

Sir Edward Coke in his Comment upon the Statute of *Marlbridge* says, that by the Common Law Parsons of Churches that had *Curam Animarum* were not compellable to come to Tourns or Leets; and that other Clerks, if they be distrain'd to come to Tourn or Leet, shall have a Writ reciting this Statute to be discharg'd; and that tho' the Word *Religiosi* in the proper Sense is taken for Regulars, yet Ecclesiastical Persons that are Seculars are also within this Act. *2 Inst. 121. ff. N. B. 159, 160.*

Women and Tenants in ancient Demesne are not compellable to come to Court Leets. *ff. N. B. 161.*

If a Man hath a House within two Leets he shall be taken to be Conversant where his Bed is, for in that part of the House he is most Conversant, and here Conversant shall be taken for most Conversant.

If a Man hath a House and Family in two Hundreds, so as he is in Law Conversant or Commorant in both Hundreds, yet he shall do his Suit to the Tourn or Leet whereof his Person is Commorant, 2 Inst. 122.

Steward
Judge.

Jury twelve
at least.

Strangers may
be of the
Jury.

Constables,
&c. appointed
here.

Offences en-
quirable of
here.

The Style of this Court is *Curia visus Franc' Pleg' apud B. coram A B. Seneschallo, &c.* And the Steward is Judge as the Sheriff was in the Tourn, and all Freeholders and other Persons within the Precinct are obliged to come to it except those who are discharg'd by the abovesaid Statutes. The Jury ought to consist of twelve Freeholders at least, who are to enquire and present all things presentable; but if there are not twelve Freeholders, Reliants, or any Suitors, the Steward may cause Strangers that come within the View or Precinct to be of the Jury. And the Steward hath Authority in this Court to elect Officers, as Constables, Tythingmen, Haywards, Ale-Tasters, &c. and to punish Offences at Common Law, but not by Statute, unless the Statute give such Authority. 2 Inst.

Offences of which this Court takes Cognizance by the Common or Statute Law are, of Tipling in Ale-Houses, Misdemeanors of Ale-Conners, Assaults whereby Bloodshed ensueth, Common Barrators, Bawdy-Houses; Misdemeanors of Constables for neglecting to keep Watch and Ward, and to execute their Office upon Vagabonds and sturdy Beggars; Defect in Bridges, Causeways, and Highways; Destroyers of antient Bounds to distinguish Parishes, Tythings, Commons, &c. Misdemeanors of Bakers that do not observe the Assize of Bread, Brewers that do not observe the Assize of Ale and Beer; Offences of Butchers, Tanners, Curriers, Cottages and Inmates, Deciners or Suitors, Reliants, not appearing at the Leet, Estrays, Waifs, and Treas-
sures

sure-Trove; Offences of Eaves-Droppers, Fore-stallers, Regrators, and Ingrossers, unqualify'd Persons keeping Guns, Dogs, &c. and destroying the Game, unlawful Games, Hedge-Breakers, those that neglect to make Hue and Cry after Robberies and Felonies committed; Misdemeanors of Higlers, Innholders, of those that give Lands in Mortmain without License, Millers, Night-Walkers, common Nuisances, the want of Stocks, Pillory, and common Pounds, Rescous, Scolds; Misdemeanors of Shooemakers, Searchers, and Sealers of Leather, those that put Stone-Horses of two Years old into a Common; Offences in Victuallers, false Weights and Measures.

The Lord of the Leet ought to have a Pillory and Tumbrel, without which Justice cannot be done, for always to punish by Amercement is against common Right, and for want thereof the Lord may be fin'd, or his Liberty seiz'd. 2 *Danv.* 289. *Cro. Eliz.* 698. Lord to have a Pillory and Tumbrel.

They ought to be provided by the Lord of the Liberty, and not by the Inhabitants, unless there be a Prescription to the contrary; but Stocks ought to be provided at the Charge of the Town, for originally they were not to punish, but to keep Men in hold, and the Town that hath none shall forfeit 5 l. 2 *Danv.* 289. Stocks to be found by the Town.

If a Man be elected in a Court Leet to be a Constable within the Jurisdiction of the Leet, and before he is sworn the Justices of Peace at their Sessions discharge him, because he is a Master of Arts, or for other Cause, and elect and swear another to be Constable there, upon a Complaint of this to the Court of King's Bench, the Court of King's-Bench may grant a Writ to discharge the last Man, and to swear him that was elected at the Leet, because the Election of the Constable belongs properly to the Leet, without a reasonable Cause to the contrary. *Hill.* 10 *Car. B. R. Herson's Case*, who was elected in the Leet of the Bishop of Winton in Waltham Welbeck in Comitatu Southampton, and the Writ granted Sessions can't discharge a Constable chosen at a Leet without Cause.

Grand Leet
may have Au-
thority over
inferior Leets.

granted accordingly. *Tr. 6 Car. B. R. Arundel's Case of Dorsetshire* a like Writ granted also.

If there are several Manors within a Wapentake, and the several Lords of the Manors have time out of mind had Leets therein, at which the Resiants within the respective Manors have appear'd, and the Lord of the Wapentake by Prescription hath had a Leet to which each Town hath used to send a Constable and four Men, this Grand Leet hath the Superiority of all other Leets within it, and the Reeves and four Men ought to appear there, and enquire of all Matters enquirable within the inferior Leets, and of Concealments of Offences in the said Leets, but shall not compel any the Resiants of the Manors, except the Reeve and four Men, from each Town to appear there; but if they come not, the Vill shall be amerced. *Mich. 18 Jac. between Cook and Stubbs. Cro. Jac. 583. adjudged.* And that for such Leet a special Prescription ought to be made, and not a general one.

Steward's Au-
thority.

A Man may prescribe for a Leet to enquire of one or more Articles only. *2 Danv. 290.*

A Steward cannot grant Surety of the Peace unless by Prescription, but he may commit those who make an Astray before him in the Execution of his Office, or bind them to the Peace or good Behaviour. One cannot be amerced for a particular Trespass either against the Lord or any other Person, but he may be amerced for publick Nuisances. *1 Saund. 135.*

For a Rent distrainable no Amercement shall be in the Leet. *1 Danv. 457.* But one may be amerced for Non-payment of *Certum Leta* to the Lord, who is a Deciner. *Ibid.*

Amercements
to be affect'd.

Every Amercement ought to be moderated, otherwise a Writ *de moderata Misericordia* lies. *1 Inst. 126.*

If a Jury in a Leet tax an Amercement, this is sufficient without any other Affectment, for the Amercement is the Act of the Court and the Affectment of the Jury. *8 Co. 40. b.*

But

But if the Steward affeers an Amercement upon the Presentment of the Jury, it is void.
8 Co. 40. b.

If any Contempt or Disturbance shall be committed in any Court of Record, the Judges may impose a reasonable Fine upon the Offenders. And a Leet is a Court of Record, and the Steward is Judge there, therefore if any Contempt or Disturbance happen in Court before him, he may impose a reasonable Fine upon the Offenders; as where the Bailiff of the Leet refuses to execute his Office, or a Tythingman refuses to make a Presentment in the Leet; so where one of the Jury depart without giving his Verdict, he may be fin'd by the Steward. 8 Co. 38. *Grieflye's Case*.

Steward may impose a Fine for Contempt.

A Fine is a pecuniary Punishment assess'd by the Steward for an Offence or Contempt committed in Court, or by publick Officers out of Court, in Administration of their Offices. A Fine is always assess'd by the Steward, and is not to be affeer'd, tho' sometimes it is called an Amerciament, and the Lord may have an Action of Debt or Distrein for a Fine impos'd. This is the only Court that can fine and not imprison. An Amerciament is a pecuniary Punishment assess'd by the Homage or Jury for Offences committed out of Court by private Persons to be mitigated by Afferors, who are to affirm the Reasonableness thereof upon their Oaths where no express Penalty is inflicted by Statute, and for this the Lord may have an Action of Debt or Distrain of common Right. *Co. Compl. Copyholder. S. 26. 8 Rep. 38, &c. 11 Rep. 43. 2 Danv. 292.*

If a Man be amerc'd in a Leet, he ought to be amerc'd to a certain Sum, as 10 s. 20 s. or other certain Sum, and ought not to be amerc'd in general, and after affeer'd to a certain Sum; for the Amercement ought to be certain, and it ought after to be affeer'd and mitigated by others. *Hobart's Reports 173. between Wilton and Hardingham. 2 Danv. 292.*

The

The Sheriff in his Tourn, and the Steward in the Leet, may take Recognizances for the keeping the Peace, for these Courts were instituted for the Commonweal, as well for the Preservation of the Peace as the Punishment of common Nuisances, &c. *Ibid.*

If in open Court one tells the Steward of the Leet that he lies, he may fine him, for the Leet is the King's Court, and a Court of Justice, to which Respect and Reverence ought to be shew'd. *Mich. 39 & 40 Eliz. between the Earl of Lincoln and Fisher adjudg'd. Moor 470.*

Contempts
finable.

If one puts his Hat on in Court, and upon the Steward's admonishing him thereof, he answers, I do not value what you can do, the Steward may fine him. *Mich. 14 Car. 2. between Sir Edward Bathurst and Cox. Raym. 61. adjudged. Ibid.*

Jury.

A Presentment in a Leet shall be by twelve, and not by fewer, otherwise every Presentment there is traversable; and if any Stranger be there, if there be not sufficient Resiants there to be impanell'd, the Steward may impanel a Stranger there, for that it is to enquire for the King, and for redressing Matters which are Annoyances to the Commonwealth; and if more be sworn than twelve, (as they may be for the King) yet if twelve of them agree, and the rest disagree, it is a good Verdict; and there used very often to be fifteen, sixteen, or seventeen, of the Jury in the Leet, but a Jury to try an Issue between Parties by twelve only. *Kitchin 13.*

By Grant of a Hundred a Leet passeth as incident thereto, for a Hundred cannot be without a Leet. *Kitchin 70.*

Assaults are not enquirable or punishable by Presentment in the Leet, but Bloodshed is. *Kitchin 73.*

If one beat another in Defence of his Goods, this is not punishable by Presentment in a Court Leet. *Ibid. 74.*

The Lord may sell a Distress taken for an Amercement in the Leet. *Kitchin 85.*

He may distrain in the high Streets for such Amercements, or in any Place within the Precinct of the Leet. *Ibid.* 87.

It was resolved in *Godfrey's Case*, that where Jurors in a Court Leet contemptuously refuse to present the *Certum Lata* 10 s. and the Steward imposeth a Fine of 5 l. upon them, that this Fine impos'd upon them jointly was not good, but it ought to have been several. 11 *Rep.* 42.

Courts Leet may fine, but not imprison, and some Courts may neither fine nor imprison, but amerce, as Courts Baron, County, and Hundred Courts, which are not Courts of Record; and for an Amercement in a Court Baron, the Lord shall not distrain without a Prescription; but for a Fine or Amercements in a Court Leet Distress is incident of Common Right. *Scroggs* 115.

A Man was amerc'd in a Court Leet for receiving and keeping one in his House who was not sworn to the King, and *per Cur'* no Goods shall be distrain'd for this Amerciament but only the proper Goods of the Party amerced, altho' the Goods of others were Levant and Couchant on the Ground. *Scroggs* 115.

W. brought Trespass against *L.* the Defendant justify'd that the Plaintiff was a common Baker, dwelling in *T.* in the County of *N.* and that it was presented in a Leet that he had sold Bread against the Affize in *Locis Vicinis*, whereupon he was amerc'd, and the Amerciament affeer'd to 10 s. and that by Precept out of Court he did distrain the Plaintiff; and the Court gave Judgment for the Plaintiff, for that it did not appear that the Offence was committed within the Jurisdiction of the Leet, which should have been specially pleaded; and the Plea is absurd, for it is said he was amerc'd without saying what; for the Jury must amerce to a certain Sum, which must be mitigated and affeer'd by others. *Wilson and Harding.* *Scroggs* 116.

Crown.

14 Ed. 3.

The People of
England shall
not be subject
to the Crown
of France.

Neither by colour of our being King of France, and that the said Realm pertaineth to us, or that we cause our selves to be nam'd King of France in our Style, or have chang'd our Seal or Arms, nor for any Commands which we have or shall make as King of France, our Realm of England, or the People of the same, shall not in any Time to come be put in Subjection to us, our Heirs or Successors, as Kings of France; but shall be free and quit of all manner of Subjection and Obeisance, as they were wont to be in the Time of our Progenitors Kings of England, for ever. Dated at Westminster the 14th Year of our Reign of England, and the 1st of France. Stat. 14 Ed. 3.

7 H. 4. c. 2.

Crown settled
on the Lanca-
ster Family.

That Settle-
ment declar'd
void by a sub-
sequent Par-
liament.

The Inheritance of the Crown and of the Realms of England and France are limited and settled on the Person of the King, and his four Sons by Name successively in Tail. Stat. 7 H. 4. cap. 2.

N. B. The Entail of the Crown made by Henry 4. (7 Hen. 4. cap. 2.) on his Issue was declar'd null and void by Edward 4. (Rot. Parl. 1 Edward 4.) in the following Words, "Be it ordain'd, declar'd, and establish'd, that all Statutes, Acts, and Ordinances heretofore made, in and for the Hurt, Destruction, and avoiding of the Right and Title of King Richard, or of his Heirs, to ask, claim, or have the Crown Royal, Power, Estate, Dignity, Preheminence, Governance, Exercise, Possessions, and Lordships abovesaid, be void, and be taken, holden, and reputed void and for nought, annull'd, repeal'd, revok'd, and of no Force, Value, or Effect." Which Act of Annulation made by Edward 4. was never repeal'd by H. 7. as some have imagin'd: This, says a certain Author, will appear upon the Perusal of that Statute, the Words whereof are, "The King our Sovereign Lord remembring how against Righteousness, Honour, Nature, and Duty, an inordinate, seditious, and slanderous Act was made against the most famous Prince, of Blessed Memory, King H. 6. our Uncle, in Parliament in the first Year of Edward 4. late King of England, whereby our said Uncle, contrary to due Allegiance and all due Order, was attainted of High-Treason, &c. it is ordain'd, that the said Act, and all Acts of Attainder, Forfeiture, and Disablement, made or had in the same Parliament, be void, annull'd, and repeal'd, and of no Force or Effect." From whence it

is evident, (says my Author) that by this Repeal only those particular Acts, or rather Clauses of Acts, were abrogated, whereby the Heirs of Henry Earl of Derby were declar'd evermore unable and unworthy to have, joy, or occupy, hold, or inherit any Estate, Dignity, Preheminence, Inheritaments, or Possessions, within the Realm of England, &c. All the other Judgments in Parliament for the Title of Edward 4. and against that of the House of Lancaster, still remaining unrepeal'd and in full Force. The utmost therefore that can be collected from this Statute of Henry 7. is no more than this, *That those Incapacities which arose from Corruption of Blood and Forfeiture were now remov'd from H. 6. and his Heirs*; but that was not sufficient to restore his Title to the Crown, the Act of Parliament on which it depended having been annull'd by Edward 4. and never again reviv'd.

The King calling to mind the Duty of his Subjects, 11 H. 7. c. 1. and that they by reason of the same are bound to serve Subjects their Sovereign Lord for the Time being in his Wars, for bound to the Defence of him and the Land, against every Rebel-serve the lion, Power, and Might, rear'd against him, and that for King for the the same Service it is not reasonable, but against all Laws, Time being, Reason, and good Conscience, that the said Subjects going with their Sovereign Lord in Wars, attending upon him in his Person, or being in other Places by his Command, within this Land or without, any thing should lose or forfeit for doing their true Duty and Service of Allegiance; it is enacted, that from thenceforth no Person or Persons that attend upon the King and Sovereign Lord of this Land for the Time being in his Person, and do him true and faithful Service of Allegiance in the same, or be in other Places by his Command, in his Wars within this Land or without, shall in no wise be Convict or And are in- Attaint of High-Treason, nor of other Offences for that demnified for Cause, by Act of Parliament, or otherwise, whereby he so doing. or any of them shall lose or forfeit Life, Lands, Tenements, Rents, Possessions, Hereditaments, Goods, Chattels, or any other things, but be for that Deed and Service utterly discharg'd of any Vexation, Trouble, or Loss: And if any Act, or Acts, or other Process of Law, be made contrary to this Ordinance, then that Act, or Acts, or other Process of Law, shall be utterly void.

Stat. 11 H. 7. cap. 1.

Provided that no Person shall take any Benefit or Advantage by this Act who shall hereafter decline from his Crown settled said Allegiance. *Ibid.*

on the Princess
Elizabeth.

The

Seems to extend only to those who adhere to the present Establishment.

28 H. 8. c. 7.

Princesses Mary and Elizabeth disinherited.

And the Crown settled on the King's Issue by Queen Jane.

Remainder to such Persons as the King shall appoint.

35 H. 8. c. 1.

Crown again settled on the Princesses Mary and Elizabeth, and to such Persons as the King shall appoint.

Crown settled on the Suffolk Family.

1 Eliz. c. 1.

Supremacy of the Crown asserted.

Oath of Supremacy enacted.

Penalty of maintaining foreign Ecclesiastical Jurisdiction.

The Crown is limited and settled on his Majesty and the Heirs Male of his Body, and in Default of such Issue, upon the Princess Elizabeth and the Heirs of her Body, Stat. 25 H. 8. cap. 22.

The Princess Mary and the Princess Elizabeth are declared illegitimate, and the Succession of the Crown is settled and limited to the Issue of his Majesty by Queen Jane, and in Default of such Issue, the King is impower'd to limit the Succession of the Crown to such Persons as he by his Letters Patents or last Will in Writing should see fit: And both Houses of Parliament faithfully promise to obey such Person or Persons, Males or Females, as his Majesty should give the Crown to. Stat. 28 H. 8. cap. 7.

The Succession of the Crown is limited after the Death of Prince Edward to the Princess Mary and the Heirs of her Body, Remainder to the Princess Elizabeth and the Heirs of her Body, and in Default of such Issue, to such Person and Persons as the King by his Letters Patents or last Will in Writing should appoint. Stat. 35 H. 8. cap. 1.

N. B. The King by his last Will limited the Succession, in Default of Issue of the two Princesses Mary and Elizabeth his Daughters, to the Issue of his youngest Sister Mary, first married to the King of France, and afterwards to Charles Brandon Duke of Suffolk, to the Exclusion of the Issue of his eldest Sister Margaret, who married the King of Scotland.

'Tis enacted, that no foreign Prince, Person, Prelate, State, or Potentate, Spiritual or Temporal, shall use, enjoy, or exercise, any manner of Power, Jurisdiction, Superiority, Authority, Preheminence, or Privilege, Spiritual or Ecclesiastical, within this Realm, or the Dominions thereunto belonging. Stat. 1 Eliz. c. 1.

And all Ecclesiastical Persons, Graduates in the Universities. Ministers of State, Judges, Justices, and other Lay and Temporal Officers, are hereby enjoin'd to take the Oath of Supremacy, on pain of losing their respective Places, Benefices, and Preferments, and of being disabled to hold the same during their Lives. Ibid.

And if any Subject of this Realm shall by Writing, Printing, Teaching, Preaching, express Words, Deed, or Act, advisedly, maliciously, and directly, affirm, hold, stand with, set forth, maintain, or defend, the Authority, Preheminence, Power, or Jurisdiction, Spiritual or Ecclesiastical, of any foreign Prince, Prelate, Person, State, or Potentate, whatsoever, heretofore claim'd, us'd, or usurp'd, within this Realm, or the Dominions thereto belonging; or shall advisedly, maliciously, and directly, put in ure, or execute any thing for the extolling, Advancement,

vancement, setting forth, Maintenance, or Defence, of any such pretended or usurp'd Jurisdiction, Power, Pre-eminence, or Authority; such Persons, their Abettors, Aiders, Procurers, and Counsellors, being thereof convicted and attainted, shall forfeit to the Crown for their first Offence all their Goods and Chattels, as well real as personal; and if such Offender shall not have Goods and Chattels to the Value of 20 l. he shall, besides the Forfeiture of the same, suffer one Years Imprisonment without Bail or Mainprize. *Ibid.*

And the Benefices, Prebends, and other Ecclesiastical Promotions and Dignities, of every Spiritual Person so offending and attainted, shall from thenceforth be utterly void; so that the Patron or Donor may present or grant the same again as if the Incumbent was dead. And if such Spiritual Person shall offend a second time, he shall incur a *Premunire*. And if a third time, he shall be adjudg'd guilty of High-Treason. *Ibid.*

Prosecution to be within one Year after the Offence; and if for Words only, the Offender to be indicted within half a Year. *Ibid.*

The three Estates assembled in Parliament declare, 1 Eliz. c. 3^d that her Majesty Queen Elizabeth is, and in very Deed, Queen Elizabeth and of most meer Right, ought to be, by the Laws of *Elizabeth's Right to* God, and the Laws and Statutes of this Realm, their the Crown re- most rightful and lawful Sovereign Liege Lady and Queen, cognized. and that her Highness is rightly, and lineally, and lawfully descended, and come of the Blood Royal of this Realm. Stat. 1 Eliz. cap. 1.

For which Causes they beseech her Highness that it may be enacted, establish'd, and declar'd, that they do recognize, acknowledge, and confess the same, her Estate, Right, Title, and Succession, to be in her Highness and the Heirs of her Body to be begotten. and thereunto most humbly and faithfully they do submit themselves, their Heirs and Posterities, for ever. And they farther beseech her Majesty, that it may be enacted, that as well this their Declaration, Confession, and Recognition, as also the Limitation and Declaration of the Succession The Limita- of the imperial Crown of this Realm, mentioned in the tion of the said Act of 35 H. 8. shall stand, remain, and be the Law Crown by the of this Realm for ever, and that all Sentences, Judg 35 H. 8. con- ments, and Decrees, and also as much of every Clause, firm'd. Article, Branch, Matter, or Thing contain'd or express'd in any Act or Acts of Parliament, as being any thing re- And all Acts pugniant, contrary, or derogatory to this their said Con- impeaching fession, Declaration, or Recognition, or to any part there- the Queen's of, or contrary to the said Limitation of the Succession Title an; of null'd

of the Imperial Crown establish'd by the said Act of 35 H. 8. shall be utterly void. *Ibid.*

5 Eliz. c. 1.
Maintainers
of the Pope's
Authority in-
cur a *Premu-
nire*.

Second Of-
fence High-
Treason.

1 Jac. 1. c. 1.
Title of King
James 1. re-
cognized,

Notwith-
standing the
Crown was
settled on the
Suffolk Family
by 35 H. 8.
and King
Henry's Will.

1 W. & M.
Sess. 1. c. 6.
New Coróna-
tion Oath en-
acted.

If any Subject of this Realm, or the Dominions thereunto belonging, shall by Writing, Cyphering, Printing, Preaching, or Teaching, Deed, or Act, advisedly and willingly hold, or stand with, to extol, set forth, maintain, or defend, the Authority, Jurisdiction, or Power of the Bishop of Rome, or his See, heretofore claim'd, us'd, or usurp'd, within this Realm, or the Dominions thereto belonging, or by any Speech, open Deed, or Act, advisedly and wittingly attribute any such manner of Jurisdiction, Preheminence, or Authority, to the said See of Rome, or to any Bishop of the same See within this Realm; every such Offender, their Abettors, Procurers, and Counsellors, and also their Aiders, Assisters, and Comforters, being indicted or presented within one Year after the Offence, shall incur a *Premunire*; and for a second Offence, shall be adjudg'd guilty of High-Treason. Stat. 5 Eliz. cap. 1.

The three Estates in Parliament in most humble and lowly manner do beseech his Majesty King James, that as a Memorial to all Posterities, among the Records of the High Court of Parliament for ever to endure, of their Loyalty, Obedience, and hearty and humble Affection, it may be publish'd, declar'd, and enacted, that they, being bound thereunto both by the Laws of God and Man, do recognize and acknowledge, that immediately upon the Dissolution and Decease of Queen Elizabeth the Imperial Crown of England, and Dominions thereto belonging, did by inherent Birth-right, and lawful and undoubted Succession, descend and come to his Majesty, as being lineally, justly, and lawfully next and sole Heir of the Blood Royal of this Realm, and that by lawful Right of Descent under one Imperial Crown his Majesty is of the Realms and Kingdoms of England, Scotland, France and Ireland, the most potent and mighty King, and thereunto they most humbly and faithfully do submit and oblige themselves, their Heirs and Posterity, for ever. Stat. 1 Jac. 1. cap. 1.

It is hereby enacted, that the Oath hereafter mention'd shall be administer'd to their Majesties King William and Queen Mary at their Coronation in this manner, viz.

The Archbishop or Bishop shall say,

Will you solemnly promise and swear to govern the People of this Kingdom of England, and the Dominions thereto belonging, according to the Statutes in Parliament agreed on, and the Laws and Customs of the same.

The

The King and Queen shall say,
I solemnly promise so to do.

Archbishop or Bishop.

Will you to your Power cause Law and Justice in Mercy to be
executed in all your Judgments.

King and Queen:

I will.

Archbishop or Bishop.

Will you to the utmost of your Power maintain the Laws of
God, the true Profession of the Gospel, and the Protestant Re-
form'd Religion establish'd by Law? And will you preserve unto
the Bishops and Clergy of this Realm, and to the Churches com-
mitted to their Charge, all such Rights and Privileges as by Law
do, or shall, appertain unto them, or any of them.

King and Queen.

All this I promise to do.

After this the King and Queen laying his and her Hand
upon the holy Gospels, shall say,

King and Queen.

The Things which I have here before promis'd I will perform
and keep. So help me God.

And the said Oath shall be in like manner administer'd
to every succeeding King or Queen of this Realm at their
respective Coronations by one of the Archbishops or
Bishops of this Realm, to be thereunto appointed by such
King or Queen. Stat. 1 W. & M. Sess. 1. cap. 6.

Whereas the Lords Spiritual and Temporal and Com- 1 W. & M.
mons assembled at Westminster, representing all the Estates of Sess. 2. c. 2.
the People of this Realm, did on the 13th of January, 1688. Declaration
present unto their Majesties William and Mary, then stil'd of the Male
Prince and Princess of Orange, a certain Declaration in Administra-
Writing, importing, that the late King James 2. by the on of King
Assistance of evil Counsellors, Ministers, &c. did endea- James 2. on
vour to subvert and extirpate the Protestant Religion and which the
the Laws and Liberties of this Kingdom, by dispensing Vote of Abdis
with, and suspending of Laws, by committing and profe- cation was
cuting divers worthy Prelates for petitioning to be excus'd found.
in concurring therein, by granting a Commission for
erecting a Court call'd the Court of Commissioners for
Ecclesiastical Causes, by levying Money for other time

1 W. & M.
Sess. 2. c. 2.

Convention
assembled by
the Prince of
Orange.

Vindicate
their Rights.

and in other manner than was granted by Parliament, by keeping a standing Army in time of Peace without Consent of Parliament, and quartering Soldiers contrary to Law, by causing Protestants to be disarm'd when Papists were arm'd and employ'd contrary to Law, by violating the Freedom of Election of Members to serve in Parliament, by Prosecutions in the King's-Bench for Matters cognizable only in Parliament, and other arbitrary and illegal Courses; and whereas corrupt and unqualify'd Persons had been return'd on Juries, particularly in Trials of High-Treason, those who were not Freeholders, and excessive Bail had been requir'd in criminal Cases, and excessive Fines impos'd, and illegal and cruel Punishments inflicted, and Grants of Fines and Forfeitures made before Conviction, contrary to Law; and whereas the said King James 2. having abdicated the Government, and the Throne being thereby vacant, his Highness the Prince of Orange, whom it had pleased Almighty God to make the glorious Instrument of delivering this Kingdom from Popery and arbitray Power, did write Letters to the Lords Spiritual and Temporal, being Protestants, and to the several Counties, Cities &c. for chusing Persons to represent them in Parliament, to meet and sit at *Westminster* on the 22d of *January*, 1688. upon which Letters Elections had been accordingly made, the said Lords and Commons being assembled in a full and free Representative of this Nation, did, as their Ancestors in like case had usually done for the vindicating and asserting their antient Rights and Liberties, declare

That the pretended Power of suspending Laws, or the Execution of Laws by regal Authority without the Consent of Parliament, is illegal, that the Commission for erecting the Court for Ecclesiastical Causes, and all other Commissions and Courts of the like Nature, are illegal and pernicious, that levying Money without Grant of Parliament, or for longer Time, or in other manner, than the same is granted, is illegal, that it is the Subjects Right to petition the King, and all Prosecutions for the same are illegal, that the having a standing Army in time of Peace without Consent of Parliament is against Law, that Protestants may have Arms for their Defence suitable to their Conditions, and as allow'd by Law, and Elections of Members of Parliament ought to be free, and Freedom of Speech in Parliament ought not to be question'd in any Place out of Parliament, that excessive Bail ought not to be requir'd, excessive Fines impos'd, or cruel and unusual Punishments inflicted, that Jurors in High-Treason ought to be Freeholders, that Grants of

Fines

Fines and Forfeitures before Conviction are illegal and void, and that Parliaments ought to be held frequently.

And they did claim, demand, and insist upon all and singular the Premises as their undoubted Rights and Liberties, and having an entire Confidence that the Prince of *Orange* would perfect their Deliverance and preserve them from the Violation of their Rights which they had here asserted, and from all other Attempts upon their Religion, Rights, and Liberties,

The said Lords and Commons did resolve,

1 W. & M.

That *William* and *Mary* Prince and Princess of *Orange* be, *Seff. 2. c. 2.* and be declar'd King and Queen of *England, France and Ire-* And declare *land*, and the Dominions thereunto belonging, to hold the the Prince and Crown and royal Dignity of the said Kingdoms and Do- Princesses of minions to them the said Prince and Princesses during their *Orange* King Lives, and the Life of the Survivor of them; and that and Queen. the sole and full Exercise of the regal Power be only in, But the regal and executed by, the said Prince of *Orange*, in the Names Power only in of the said Prince and Princesses during their joint Lives; the Prince. and after their Deceases the said Crown and royal Dignity of the said Kingdoms and Dominions to be to the Heirs of the Body of the said Princess; and for Default of such Farther Limi- Issue, to the Princess *Anne* of *Denmark*, and the Heirs of tation of her Body; and for Default of such Issue, to the Heirs of the Crown. the Body of the said Prince of *Orange*.

And the Lords and Commons did pray the said Prince Prince and and Princess to accept the same accordingly, which they Princesses of did; and their Majesties were pleas'd, that the said *Orange* accept Lords and Commons should continue to sit. and with the Crown, their Majesty's Concurrence make Provision for the Settle- and turn the element of the Religion, Laws and Liberties, of this Convention Kingdom. into a Parlia-

It is hereby enacted that the said Claim of Rights and ment, Liberties should be firmly and strictly holden and observ'd, and all Officers and Ministers should serve their Majesties and their Successors according to the same in all Times to come.

And the said Lords and Commons do recognize, ac- Who recog- knowledge, and declare, that King *James 2.* having abdi- nize the King cated the Government, and their Majesties having accept- and Queen's ed the Crown, their said Majesties did become, were, Title to be are, and of Right ought to be, by the Laws of this Realm legal, &c. King and Queen of *England, France and Ireland*, and enact that the Succession of the Crown be limited as aforesaid.

And it is farther enacted. that every Person who shall Papists, &c. be reconciled to, or hold Communion with, the See of disabled to in- *Rome*, or profess the Popish Religion, or shall marry a herit the Papist, shall be excluded, and for ever incapable to in- Crown,

herit or possess the Crown of this Realm and Ireland, or any of the Dominions thereto belonging; and in every such Case the People of these Realms shall be, and are hereby, absolv'd from their Allegiance, and the Crown shall descend to such Persons, being Protestants, as should have inherited the same in case such Papist or Person marrying a Papist were naturally dead.

And every succeeding King and Queen on the first Day of the first Parliament after his or her Accession, sitting in the Throne in the House of Peers, in the Presence of the Lords and Commons, or at their Coronation, which shall first happen, shall make, subscribe, and audibly repeat, the Declaration mention'd in the 30th of King Charles 2. to be taken by *cap. 1. viz.*

the King at his Accession. *I A. B. do solemnly and sincerely in the Presence of God profess, testify, and declare, that I do believe that in the Sacrament of the Lord's Supper there is not any Transubstantiation, &c.*

But if such King or Queen shall be under twelve Years of Age at their Accession, then he or she shall subscribe and repeat the said Declaration at their Coronation, on the first Day of the first Parliament after they shall have obtain'd the said Age.

No Dispensation with Laws to be allow'd. And it is farther enacted, that no Dispensation by *non obstante* to any Statute, or any part thereof, shall be allow'd, but the same shall be void, except a Dispensation be allow'd of in such Statute, and except in such Cases as shall be provided for in this Sessions of Parliament.

2 W. & M. Sess. 2. c. 1. The Lords Spiritual and Temporal and Commons do hereby recognize and acknowledge, that their Majesties The King and Queen were, are, and ought to be, by the Laws of this Realm King and Queen of England, France and Ireland, and the Dominions thereunto belonging. *Stat. 2 W. & M. Sess. 2. cap. 1.*

And the Acts of the Convention confirm'd. And it is enacted, that all and singular the Acts made and enacted in the late Parliament assembled at Westminster the 13th of February, 1688. were, and are, Laws and Statutes of this Kingdom, and as such ought to be reputed, taken, and obey'd, by all the People of this Kingdom. *Ibid.*

12 W. 3. c. 2. 'Tis hereby enacted and declared, that the Princess Sophia, Electress and Dutchess Dowager of Hanover, Daughter of the Princess Elizabeth, late Queen of Bohemia, Daughter of King James 1. is next in Succession in the Protestant Line to the Crown of these Realms, in Default of Issue of the Princess Anne of Denmark, and of his Majesty King William; and that from and after the Deceases of his said Majesty and of her Royal Highness without Issue respectively, the Crown of England, France and

and Ireland, and the Dominions thereto belonging, shall be, remain and continue, to the said Princess *Sophia* and the Heirs of her Body, being Protestants; and thereunto the Lords and Commons, in the Name of all the People of this Realm, submit themselves, their Heirs and Posterities. *Stat. 12 W. 3. c. 2.*

Provided, that all Persons who shall take or inherit the Papists ex-said Crown by virtue of this Act, and shall be reconciled cluded. to, or hold Communion with, the See or Church of Rome, or shall profess the Popish Religion, or shall marry a Papist, shall be subject to such Incapacities as are provided and enacted in the 1 *W. & M. Sess. 2. cap. 2.* And that every succeeding King and Queen shall have the Co-King to take coronation Oath administer'd to them according to the Act the Corona- of 1 *W. & M. Sess. 1. cap. 6.* And subscribe and repeat tion Oath. the Declaration in the said last recited Act, referr'd to. *Ibid.*

And it is farther enacted, that whosoever shall here- And join in after come to this Crown shall join in Communion with Communion the Church of *England* as by Law establish'd. *Ibid.* with the

And if the Crown shall come to any Person not being Church of a Native of *England*, this Nation shall not be oblig'd to *England*. engage in any War for the Defence of any Dominions *England* not to which do not belong to the Crown of *England*, without be concern'd Consent of Parliament. *Ibid.* in his foreign

And no Person succeeding to this Crown shall go out Wars. of the Dominions of *England* without Consent of Parlia- King shall not ment. *Ibid.* go out of Eng-

And after the farther Limitation by this Act shall take land. Effect, all Matters properly cognizable in the Privy Coun- Resolutions in cil shall be transacted there, and all Resolutions taken Council to be thereupon shall be sign'd by such of the Privy Council as sign'd by the shall advise and consent to the same. *Ibid.* Advisers.

And no Person born out of the Dominions of *England*, 12 *W. 3. c. 2.* Scotland, or *Ireland*, altho' naturaliz'd or made a Denizon, No Foreigner except such as are born of *English* Parents, shall be capa- to be of the ble to be of the Privy Council, or a Member of either Privy Coun- House of Parliament, or to enjoy any Office or Place of cil, a Member Trust either civil or military, or to have any Grant of of Parliament, Lands, Tenements, or Hereditaments, from the Crown, or to have any to himself, or any others in Trust for him. *Ibid.* Post civil or

And no Person who has an Office or Place of Profit un- military, al- der the King, or receives a Pension from the Crown, tho' natura- shall be capable of serving as a Member of the House of lized. Commons. *Ibid.* None that has a Place or

Pension to be a Member of the Commons.

Judges Com-
missions not
to be precari-
ous.

No Pardon
pleadable
to an Im-
peachment.

Laws for se-
curing Reli-
gion and Li-
berty con-
firm'd.

4 & 5 Ann, c. 8.

And the Judges Commissions shall be made *quandiu se bene gesserint*, and their Salaries ascertain'd; but upon the Address of both Houses of Parliament it may be lawful to remove them. *Ibid.*

And no Pardon under the Great Seal shall be pleadable to an Impeachment by the Commons. *Ibid.*

And it is enacted, that all the Laws and Statutes of this Realm for securing the establish'd Religion and the Rights and Liberties of the People, and all other Laws and Statutes now in Force, shall be ratify'd and confirm'd. *Ibid.*

An Act for the better Security of her Majesty's Person and Government, and of the Succession to the Crown of England in the Protestant Line. 4 & 5 Ann, c. 8.

N. B. All the Clauses in this Act are contain'd in the Act of 6 Ann. cap. 7. except the two following Clauses, viz.

Clause re-
quiring Privy
Counsellors
to sign their
Opinions re-
peal'd.

And Whereas by the Act 12 W. & M. cap. 2. it is enacted, that after the farther Limitation of the Crown by that Act should take Effect, all Matters properly cognizable in the Privy Council should be transacted there, and all Resolutions taken thereupon should be sign'd by such of the Privy Council as should advise and consent to the same, it is hereby enacted that the said recited Clause shall be annul'd and repeal'd. *Ibid.*

And that dis-
abling Persons
who have Pla-
ces or Pensions
to sit in the
House of

And whereas it was enacted, that no Person who had an Office or Place of Trust under the King, or receiv'd a Pension from the Crown, should be capable of serving as a Member of the House of Commons, it is hereby enacted, that the said last recited Clause shall be likewise annul'd and repeal'd. *Ibid.*

Commons re-
peal'd.

6 Ann. c. 7.

Persons main-
taining the
Pretender's
Title,

If any Person shall maliciously, advisedly, and directly, by Writing or Printing, maintain and affirm, that the Queen that now is, is not the lawful and rightful Queen of these Realms, or that the pretended Prince of Wales, who now stiles himself King of Great Britain, or King of England, by the Name of James 3. or King of Scotland, by the Name of James 8. hath any Right or Title to the Crown of these Realms, or that any other Person hath any Right or Title to the same otherwise than according to the Act of 1 W. & M. Sess. 2. cap. 2. and one other Act made in 12 W. 3. cap. 2. and the Acts lately made in England and Scotland mutually for the Union of the two King-

Or affirming
that the Par-
liament can't
limit the Suc-
cession, in

doms; or that the Kings or Queens of this Realm by Authority of Parliament are not able to make Laws to limit and bind the Crown of this Realm, and the De- scent, Limitation, Inheritance, and Government thereof,

such

such Offender shall be adjudg'd guilty of High-Treason. Writing, Stat. 6. Ann. cap. 7. guilty of

And if any Person shall maliciously and directly, by High-Trea-Preaching, Teaching, or advisedly Speaking, declare, son. maintain and affirm, that the Queen is not lawful or Maintaining rightful Queen of these Realms, &c. (as in the preceding it in Words, Clause to the Words *Inheritance and Government thereof*) a *Premunire*. such Offender shall incur a *Premunire*. *Ibid.* 6 Ann. c. 7.

Provided, that no Person shall be prosecuted for any Information Words spoken unless the Information of such Words be for Words to given upon Oath to a Justice of Peace within three Days be within after they were spoken, and Prosecution be within three three Days. Months after such Information; and no Person shall be convicted of any such Words but by the Oaths of two Two Witnes- Witnesses. *Ibid.* fes.

And this Parliament, or any other Parliament, call'd On a Demise by the Queen, her Heirs or Successors, shall not be dis- the Parlia- solv'd by the Demise of her Majesty, her Heirs or Suc- ment to sit six cessors; and if sitting, are impower'd to act, notwith- Months. standing such Demise, for six Months, unless sooner pro- rogued or dissolv'd by the Successor: And if such Parlia- ment shall be so prorogu'd, then it shall meet on the Day to which it is prorogu'd, and continue for the residue of the said six Months, unless sooner prorogu'd or dissolv'd, as aforesaid. *Ibid.*

And if the Parliament at the time of such Demise hap- pens to be separated, by Adjournment or Prorogation, it shall immediately meet and act for six Months, unless sooner prorogu'd or dissolv'd, as aforesaid; and if there is no Parliament in Being at such Demise, the last pre- If no Parlia- ceding Parliament shall immediately meet, and continue ment in Being, to act as a Parliament as if it had never been dissolv'd. the preceding Parliament to *Ibid.*

Provided, that this Act shall not alter or abridge the meet. Power of the Queen or her Successors to prorogue or dis- solve Parliaments, nor to repeal an Act of 6 & 7 W. & M. cap. 2. entituled, *An Act for the frequent Meeting and Calling of Parliaments*. *Ibid.*

And the Privy Council of her Majesty, her Heirs or Privy Coun- Successors, for the Kingdom of Great Britain, shall not be cil not dis- dissolv'd by such Demise, but continue to act six Months solv'd by a after, unless sooner determin'd by the Successor; nor Demise. shall the Offices of the Lord Chancellor or Keeper of the Great Seal of Great Britain, Lord Treasurer, Lord Presi- dent, Lord Privy Seal, Lord High Admiral, or any of the great Offices of the Household, nor shall any Office, No Office Place, or Employment, civil or military, within the civil or mili- Kingdoms of Great Britain or Ireland, Wales, Berwick, Jersey, tary deter- or min'd by the

Demise of the Crown. or the Plantations, become void by such Demise; but the said Lord Chancellor, &c. shall continue in their respective

Offices, Places, and Employments, for six Months after, unless sooner dissolv'd by the Successor. *Ibid.*

6 Ann. c. 7.

Old Seals may be us'd.

And the Great Seal, Privy Seal, Privy Signet, and all other publick Seals, shall be made use of as the respective Seals of the Successor until such Successor give Order to the contrary. *Ibid.*

New Officers disabled to be Members of Parliament.

Provided, that no Person who shall have in his own Name, or in the Name of another in Trust for him, or for his Benefit, any new Office or Place of Profit under the Crown, which at any time since the 25th of October, 1705. have been created or erected, or which shall hereafter be created or erected, nor any Commissioner, or Sub Commissioner, of Prizes, Secretary or Receiver of the Prizes, nor any Comptroller of the Accompts of the Army, nor any Commissioner of Transports, or of the Sick and Wounded, or the Agent of any Regiment, or any Commissioner for Wine Licenses, or any Governor or Deputy-Governor of the Plantations, or any Commissioner of the Navy in the out-Ports. nor any Person having a Pension from the Crown during Pleasure, shall be capable of being elected a Member of the Commons in any Parliament hereafter summon'd. *Ibid.*

Members accepting old Offices may be re-elected.

Provided, that if any Member of the Commons shall accept any Office of Profit from the Crown during such time as he shall continue a Member, his Election shall be void as if he was naturally dead: Provided nevertheless, that he be capable of being re-elected as if his Place had not become void. *Ibid.*

Number of Commissioners for executing any Office not to be encreas'd.

Provided also, that no greater Number of Commissioners be constituted for the Execution of any Office than have been employ'd in such respective Office at some time before the first Day of this present Parliament. *Ibid.*

6 Ann. c. 7.
Officers of the Navy or Army need not be re-elected.

Provided, that nothing herein contain'd shall extend to any Member of the Commons, being an Officer in her Majesty's Navy or Army, who shall receive any new or other Commission in either. *Ibid.*

Persons sitting in Parliament who are disabled, forfeit 500 l.

And if any Person disabled to sit in any Parliament hereafter to be holden, shall nevertheless be return'd. such Election and Return shall be void; and if any Person hereby disabled to be elected shall presume to sit or vote as a Member of the House of Commons, such Person so sitting or voting shall forfeit 500 l. to be recover'd by such Person as shall sue for the same by Action of Debt, Bill, Complaint or Information, wherein no Essoign, &c. shall be allow'd. *Ibid.*

And no Commissioner for disposing the Sum of Commission- 398085 l. 10 s. and all other Sums arising to Scotland by ers of the E-way of Equivalent, shall, by reason of such Commission, quivalent not or any other Commission for disposing the said Equiva- disabled. lent, be disabled from being elected a Member of Parlia- ment. *Ibid.*

The Residue of this Act relates to the Demise of her Majesty and the proclaiming her Successor, which Events having already happen'd, and consequently the Clauses concerning them expir'd, the Reader is referr'd to the Act at large to satisfy his Curiosity. Ibid.

Whereas it is agreeable to the antient Constitution of 1 Geo. c. 51. these Kingdoms that the Person of the King should freely The Clause enjoy all the just and undoubted Rights, Liberties, and restraining Privileges of the Crown, be it enacted, that the Clause the King from in the Act of 12 & 13 W. 3. entituled, *An Act for the far- going abroad ther Limitation of the Crown, and better securing the Rights and repeal'd. Liberties of the Subject*, which provided, that no Person who should come to the Possession of the Crown should go out of the Dominions of England, Scotland, or Ireland, without Consent of Parliament, shall be, and is hereby repeal'd. *Stat. 1 Geo. cap. 51.*

Whereas his Majesty is entituled to a Share amounting 4 Geo. c. 2. to 10000 l. in the capital Stock of the *South-Sea Com-* The King pany, it is hereby enacted, that his Majesty is, and shall qualified to be be capable of being and continuing Governor of the said Governor of Company for such time or times as are prescrib'd by their the *South Sea* Charter for the Continuance of any Governor therein; Company. and that the Oaths prescrib'd by the said Charter, or by any Law now in Force, and all other Acts necessary to qualify a Subject to be Governor of the said Company, shall not be administer'd to his Majesty, or requisite for his Qualification, in respect of the said Government, his Majesty's Share in the said capital Stock only excepted. And in all Cases where any Vote is to be given, or Act done by him as Governor, he may by Warrant under his Sign Manual appoint the Sub-Governor or Deputy-Governor to vote or act for him. *Stat. 4 Geo. cap. 2.*

Whereas the House of Lords of Ireland have of late as- 6 Geo. c. 5. sum'd a Power to examine and correct the Judgments and *Ireland de-* Decrees of the Courts of that Kingdom for securing of clar'd to be the Dependency of Ireland upon the Crown of Great Britain, dependent on it is enacted, that the said Kingdom of Ireland hath been, this Crown. is, and of Right ought to be, subordinate unto, and dependent upon, the Imperial Crown of Great Britain, as being inseparably united and annex'd thereunto; and that the King, with the Advice and Consent of the Lords and

and Commons of Great Britain in Parliament assembled, had, hath, and of Right ought to have, full Power and Authority to make Laws and Statutes of sufficient Force and Validity to bind the Kingdom and People of Ireland; and that the House of Lords of Ireland have not, nor of Right ought to have, any Jurisdiction to judge of, affirm, or reverse, any Judgment, Sentence, or Decree, given or made in any Court within the said Kingdom, but all such Proceedings are hereby declar'd void. Stat. 6 Geo. cap. 5.

READINGS.

Whether
Treason may
not be com-
mitted against
a King *de Jure*
out of Posses-
sion.

For the Nega-
tive.

Sir Edward Coke upon the abovesaid Statute, 11 H. 7. cap. 1. says, that this Act is to be understood of a King in Possession of the Crown and Kingdom; for if there be a King regnant in Possession, although he be *Rex de Facto*, and not *de Jure*, yet is he *Seignior le Roy* within the Purview of this Statute; and the other that hath Right, and is out of Possession, is not within this Act: Nay, if Treason be committed against a King *de Facto*, and *non de Jure*, and after the King *de Jure* cometh to the Crown, according to him, he shall punish the Treason done to the King *de Facto*; and that a Pardon granted by a King *de Jure*, that is not also *de Facto*, is void. 3 Inst. 7.

Mr. Hawkins from the Words of this Statute says, It clearly follows, that every King for the time being has a Right to the People's Allegiance, because they are bound thereby to defend him in his Wars against every Power whatsoever. 1 Hawkins 36. Sect. 15.

That one out of Possession is so far from having any Right to our Allegiance by virtue of any other Title which he may set up against the King in Being, that we are bound by the Duty of our Allegiance to resist him. *Ibid.* Sect. 16.

For the Affir-
mative.

But it was resolv'd in the Case of the Regicides, that tho' King Charles 2. was *de Facto* kept out of the Exercise of the kingly Office by Traitors and Rebels, yet he was King both *de Facto* and *de Jure*; and all the Acts which were done to the keeping him out were High-Treason. Kelynge 15.

And

And it is held by others, that whatever might have been the real Design of the said Statute of 11 H. 7. it could not certainly be the primary and chief Intention of it to support the Thrones of ambitious Intruders by what means soever they succeeded in their bold and daring Enterprizes, for this would have occasion'd the severest Censure imaginable of *Henry* the 7th's Reign; for if it was against all Law, Reason, and good Conscience, that Subjects going into Wars with Kings *de Facto* should lose or forfeit for doing this their Duty of Allegiance, it will be difficult to discover upon what Principles of Justice so many Persons were attainted in the Reign of this very Prince for no other Reason but being in the Service of his Predecessor *Richard* 3. especially when it appears, that at the time when this just and merciful Act, as it is call'd, was pass'd, several Noblemen and Gentlemen who follow'd the Fortunes of King *Richard*, and fought in his Defence at the Battle of *Bosworth* Field, still continued under Attainders, as may be seen in the Records of the 11th and 12th Years of *Henry* the 7th; but that it was the Safety and Interest of King *Henry* the 7th's Friends and Adherents which was consulted by it can never be doubted, for by virtue of it they had been effectually protected, tho' *Henry* the 7th had lost his Throne. And when this Act was pass'd he was daily threatned with an Invasion from *Perkin Warbeck*, and as he had attainted those that fought for *Richard* 3. so *Perkin*, if he had succeeded, might have us'd those that were in Arms for *Henry* the 7th in the same manner, unless disabled by some legal Restraint, such as this Statute was.

It is said farther, that *Henry* the 7th could propose no Advantage to himself from this Statute any otherwise than as he was King *de Jure*, for that he was in Danger of no Adversary who had a better Title than himself. And from thence also it is inferr'd, that the Interest and Security of the Followers of Kings *de Facto* was not the original Design or Intention of this Law, because
tho'

tho' a King *de Facto* is a King for the time being; yet he is such a one as could not possibly be thought of in this Statute, for Kings *de Jure* cannot well be suppos'd to intend the Interest of Usurpers, nor could Henry the 7th for the same Reason mean any other by a King for the time being than a King *de Jure*, as he thought himself to be; and whoever is of a contrary Opinion must suppose that Henry the 7th design'd it rather for the Service of *Perkin Warbeck* than himself, who might have been a King *de Facto* in a few Months after it was made for any thing that could be certainly foreseen to the contrary then.

And it is farther urg'd, that this Law would be inconsistent with it self if applied to Kings *de Facto*, for that the last Clause of it utterly excludes such an Interpretation. The Words are these,

*Provided alway, that no Person or Persons shall take any Benefit or Advantage by this Act, which shall hereafter decline from his or their said Allegiance: That is, Whoever at this time (when Henry the 7th was threatned with an Invasion) should declare for Perkin Warbeck, and should endeavour to support his Interest and maintain him in his unjust Acquisitions, they were not to have the Benefit of this Statute if ever Henry the 7th should again recover his Right, though they might plead they had been in the Service of a King for the time being; from whence it is beyond Contradiction evident, even by the Authority of this Statute, that there may be some Kings *de Facto* to whom it may be dangerous to do any Service, I mean such as should depose a rightful Prince, (which was the Design of *Perkin Warbeck*) and place themselves in his Throne; for it is expressly declar'd in the Clause abovemention'd, that this Statute should not be available to any Persons who act in the Defence of such Usurpers against the Prince to whom their Allegiance was before due.*

Where two

Competitors, And according to my Lord Chief Justice *Hale*, if the right Heir of the Crown be in actual Exercise

cise of the Sovereignty, suppose in one part of he who has the Kingdom, and the Usurper be in the actual the Right Exercise of the Sovereignty in another, yet the held to be in Possession. Law judgeth him in Possession of the Crown that hath the true Right, and the other is in truth not so much as a King *de Facto*, but a Disturber only, and therefore not a King within the 25th of *Edward 3.* This was the Case between *Edward 4.* and *Henry 6.* Although *Edward 4.* took upon him the Sovereignty, and was declar'd King in *London* upon the 4th of *March*, 1460. yet *Henry 6.* was in the Northen Parts, and treated as a King, and rais'd a great Army, which being subdued by King *Edward 4.* in the latter end of *May* in the bloody Battle of *Towton Field*, then, and not till then, had *Edward 4.* the total and quiet Possession of the Crown, and in *November* following held a Parliament, wherein his Title is declar'd, and the Commencement of his Reign enacted to be the 4th of *March* before, and *Henry 4.* *Henry 5.* and *Henry 6.* declar'd Usurpers: During this Interval, from the 4th of *March* to *June*, *Henry 6.* was us'd as King, and yet was not so much as King *de Facto*, *Edward 4.* the right Heir, being likewise in Possession of the Regality.

The like was held between Queen *Mary* and the Lady *Jane Dudley*, who was proclaim'd Queen at *London* by Pretence of the Nomination of *Edward 6.* and held that Title about 10 Days, for at the same time Queen *Mary* openly laid Claim to the Crown, and was also proclaim'd Queen; so that both being *de Facto* in Possession of the Crown, the Law adjudged Possession in her that had the Right, viz. Queen *Mary*.

And *Watson* was indicted for Treason against King *James 1.* before he set his Foot on *English* Ground, nor did it avail him to plead that the King was never in Possession of the Crown. *State Tryals*, 932.

See Title *Oaths, Papists, Parliament, Treason.*

Cui

Cui in Vita.

13 Ed. 1. c. 3.
Cui in Vita for
a Widow.

A *Cui in Vita* is given to the Wife where the deceased Husband lost her Lands by Default in his Life-time, also she shall be admitted to defend her Right during his Life if she come in before Judgment.

Or a Reversioner.

And if Tenant in Dower, by the Courtesy, or otherwise, for Term of Life, do make Default, &c. the Heirs, and they to whom the Reversion belongeth, shall be admitted to their Answer if they come before Judgment; and if upon Default Judgment happen to be given, they shall have a Writ of Entry for Recovery of the same after the Death of such Tenants. Stat. 13 Ed. 1. cap. 3.

READINGS.

Where it lies.

The Writ of *Cui in Vita* lieth where the Husband doth alien in Fee the Right of Inheritance of his Wife, or the Freehold of his Wife by Feoffment, or grant for Life, or in Tail, then, after the Death of her Husband, the Wife shall have *Cui in Vita contradicere non potuit*; also the Writ lieth where the Wife hath an Estate for Life, or in Tail, and the Husband alieneth that Estate and Title of the Wife's, then the Wife, after his Death, shall have this Writ. F. N. B.

194.

The Heir of
the Wife may
have a *Sur cui*
in Vita.

And if the Wife do not bring the Writ during her Life, then, if she had an Estate in Fee-Simple, her Heir shall have a Writ which is call'd *Sur cui in Vita* after her Death. And if the Wife have an

Or a *Formedon*
if it be an
Estate Tail.

Estate in Tail, and her Husband alien and make a Feoffment of that Estate, then, if the Wife dieth, her Heir shall have a Writ of *Formedon* in the Descender to recover that Estate, and not a Writ of *Sur cui in Vita*, for those Writs of *Cui in Vita* and *Sur cui in Vita* are Writs founded upon the Common Law, and of an Estate in Fee-Simple; for there was not other Estate at the Common Law which could descend but a Fee-Simple, for if the Lord by the Common Law giveth Lands to hold

hold of him, if the Tenant dieth without Heir, he shall have a Writ of Escheat. *Ibid.*

And if the Husband and Wife lose by Default the Wife's Lands, after the Death of her Husband she shall have a *Cui in Vita* for to recover those Lands so lost by Default. *F. N. B.* 187.

If Husband and Wife, and a third Person, Jointenants, purchase jointly, and the Husband alieneth all in Fee, and dieth, the Wife, as it seemeth, shall have a *Cui in Vita* of a Moiety, being the third Jointenant. *Ibid.*

If Husband and Wife be Jointenants before the Coverture, and the Husband alieneth all the Land, and dieth, she shall not have a *Cui in Vita* but for a Moiety; but if they be Joint-Purchasers during the Coverture, and he alien all the Land, and dieth, his Wife shall have a *Cui in Vita* of the whole Land, because that during the Coverture, as to Purchase, they are but one Person in Law. *Ibid.*

If Tenant for Life pray in Aid of him in Reversion, and he refuse to join, and after Tenant for Life maketh Default, &c. he in Reversion shall not be receiv'd, because he refus'd to join; but if he had join'd, and after the Tenant make Default, he should have been receiv'd. *2 Inst.* 345.

Where a Reversioner will be barr'd.

It is not necessary that he that prayeth to be receiv'd hath the immediate Reversion, for if a Lease for Life be made, the Remainder for Life, he in the Reversion shall be receiv'd. So it is where the Reversion is granted for Life, he in the Reversion in Fee may be receiv'd; but if he that hath the mean Estate, and he in the Reversion or Remainder in Fee, pray to be receiv'd at one time, he that hath the immediate particular Estate, in respect of the Proximity, shall be receiv'd; but if he be receiv'd, and make Default, he in the Reversion in Fee shall not be receiv'd. *2 Inst.* 346.

Customs and Usages.

3 Ed. 1. c. 23. **I**N no City, Borough, Town, Market, or Fair, shall Custom to any foreign Person, which is of this Realm, be distrain'd for any Debt for which he is not Debtor or reigner void. Pledge, and whoever doth it shall be grievously punish'd, and the Distress deliver'd by the Bailiff without Delay. *Westm. 1. 3 Ed. 1. cap. 23.*

31 H. 8. c. 3. The Lordships, Manors, Lands, Tenements, and Hereditaments, within the County of Kent, of which Thomas Lord Cromwell Lord Privy Seal, Thomas Burr Lord Burr, George Brook Lord Cobham, Andrew Windsor Lord Windsor, Thomas Cheyny Knt. Treasurer of the King's Household, Christopher Hales Knt. Master of the Rolls, &c. or any of them, are seiz'd to their own Use or Uses in Fee-Simple or Fee-Tail, which be of the Nature of Gavelkind, and have been heretofore divided between Heirs Males by the Custom of Gavelkind, shall be from henceforth chang'd, and in no wise hereafter be subject to be parted by the said Custom, but shall remain and descend as other Lands, Tenements, or Hereditaments, according to the Common Law of this Realm. *Stat. 31 H. 8. cap. 3.*

And to descend according to the Common Law.

READINGS.

Custom defin'd.

Custom may be defin'd to be a Law or Right not written, which being establish'd by long Use, and the Consent of our Ancestors, hath been, and daily is put in Practice; and Custom is either general or particular, general is that which is current through *England*. *Terms of Law*, 96. And these Customs are properly call'd the Common Law, and shall always be determin'd by the Judges whether there be any such general Custom or not, and not by a Jury of twelve Men. *Doct. and Stud. Dial. 1. cap. 7.*

General Custom Common Law.

Particular Customs.

Particular Custom is that which belongeth to this or that County, as Gavelkind to *Kent*, or to this or that Lordship, City, or Town, and this is what we properly call Custom. And if a Question arise in the King's Courts whether there be any such particular Custom, it shall be tried by twelve Men, and not by the Judges, except such parti:

particular Custom be of Record in the same Court. *Doct. and Stud. Dial. 1. cap. 10.*

Before the making the said Statute of 3 *Ed. 1.* Custom to cap. 23. divers Cities, Cinque-Ports, Boroughs, Towns Corporate, &c. within this Realm, did distrain Foreigners for Debt before the Statute, claim such a Custom, that if any of one City, Society, or Merchant Guild, were indebted to any of another City, Society, or Merchant Guild, if any other of the same City, Society, or Merchant Guild, that the Debtor was of, came into the City, Society, or Merchant Guild, whereof the Creditor was, that he would charge such a Foreigner for the Debt of the other. 2 *Inst. 204.*

At the Time of making the said Statute a *Capias* The Statute did not lie in an Action of Debt, but is given by the Statute of 25 *Ed. 3.* but yet this Statute doth extend to the *Capias*, because the *Capias* cometh in lieu of the Distress. 2 *Inst. 205.* extends to a *Capias.*

By the Custom of Gavelkind all the Sons inherit equally as Daughters by the Common Law, and by the Custom of Borough-*English* the youngest Son shall inherit before the eldest, and these Customs vary from all others, inasmuch as the Law takes notice of them when they are generally alledg'd, but other Customs must be particularly pleaded. Gavelkind. Borough-*English.*

In Gavelkind, tho' the Father be hang'd the Son shall inherit, for their Custom is,

The Father to the Bough,

The Son to the Plow. *Doct. and Stud.*

Dial. 1. cap. 10.

By the Custom of *Gavelkind* the Wife shall be endow'd with a Moiety so long as she keeps herself sole and without Child, which she cannot wave, and take her Thirds for her Life; and as Custom may enlarge, so may Custom abridge Dower, and restrain it to a fourth part, &c.

Of every Custom there are two essential Parts, What essential viz. Time out of the Memory of Man, and to a Custom; continual and peaceable Usage without lawful Interruption. 1 *Inst. 110.*

Gavelkind
may be in
a City, Bo-
rough, or
Seignory, but
not in an Up-
land Town.

In an Up-Land Town that is neither City nor Borough, there cannot be a Custom of Borough-*English* or Gavelkind, but these Customs may be in Cities or Boroughs; also if Lands be within a Manor Fee or Seignory, the same by the Custom of the Manor Fee or Seignory may be of the Nature of Gavelkind or Borough-*English*; but an Up-Land Town may alledge a Custom to have a Way to their Church, or to make By-Laws for the Reparations of the Church, the well-ordering of the Commons, and such like things. Non-Usage is held to be a great Presumption that there is no such Custom, but an Act of Parliament by a Non-User cannot be antiquated or loose its Force. 1 *Inst.* 81.

Customs
against a Sta-
tute.

Regularly a Man cannot prescribe or alledge a Custom against a Statute, because that is the highest Proof and Matter of Record in Law; but a Man may prescribe against an Act of Parliament when his Prescription or Custom is sav'd or preserv'd by another Act of Parliament; and an affirmative Act doth not take away a Custom, as the Statute of Wills of the 32 & 34 *H. 8.* do not take away a Custom to devise Lands, as has been often adjudg'd. 1 *Inst.* 115.

And a Custom may be alledg'd against a negative Statute which is made in Affirmance of the Common Law, as where the Statute of *Magna Charta* provideth that no Leet shall be holden but twice in the Year, yet a Man may prescribe to hold it oftner and at other times. So where the Statute of 34 *Ed. 1.* provides that none shall cut down any Trees of his own within a Forest without the View of the Forester, inasmuch as this Act is in Affirmance of the Common Law, a Man may prescribe to cut down his Woods within a Forest without the View of the Forester, as was adjudg'd in 16 *Eliz.* in the Exchequer. 1 *Inst.* 115.

Every Copyholder by the general Custom of the Realm may surrender in Court, and need not alledge any Custom for it. So if out of Court he surrender to the Lord himself, he need not

not alledge in Pleading any Custom; but if he surrender out of Court into the Hands of the Lord by the Hands of two, or three, &c. Copyholders, or by the Hands of the Bailiff or Reeve, &c. or out of Court by the Hand of any other, these Customs are particular, and therefore he must plead them. 1 *Inst.* 59.

Custom to surrender out of Court must be pleaded.

A Custom once reasonable and tolerable, if after it become grievous, and not answerable to the Reason whereupon it was grounded, yet is to be taken away only by Act of Parliament, for an Inheritance once fix'd cannot be taken away but by Parliament.

By Custom a Parson, &c. may have Tithes of such things as are not titheable of common Right. 2 *Inst.* 664.

A Custom alledg'd to stop Lights by building upon a new Foundation where no House was before was adjudg'd void, but a Custom to build upon an old Foundation to any Heighth, tho' the Lights of a Neighbour are stoppt thereby, is a good Custom. *Hughes and Keime, Telv.* 215. *Danv.* 424.

Custom to stop Lights.

It is not a good Custom in *London*, that if any Stranger comes into a Parish in *London*, and dies there, and his Body is carried and buried out of the Parish, that so much shall be paid for his Burial, and other things belonging thereto, as for the Sermon, &c. as is paid in the Place where he is buried; for this is against Reason to bind Strangers by such a Custom for Burial, who are not compellable to come to the Church to receive the Sacraments there. 15 *Ja.* 1. Sir *J. Ferris's* Case, resolved *per Curiam*, and a Prohibition granted accordingly upon a Suit in the Spiritual Court by the Parish of *St. Buttolph, London*, where the Party died, for these Duties, 2 *Danv.* 424.

Custom of Burying Fees.

It is a good Custom, that where he, and all, &c. have time out of mind been seiz'd of a Mill in the Parish of *D.* that all the Inhabitants within the said Parish ought to grind all the Grain that they expend in their Messuages or Tenements at the

Custom to grind at a Mill good.

the said Mill: This is a good Custom, tho' all the Inhabitants are not his Tenants. *M. 11 Ja. B. R.* between *Higgs* and *Gardiner* adjudg'd; for this Custom may have a reasonable Beginning, as by Composition upon building the Mill. *2 Danv.* 425.

To cut down
Trees.

It is a good Custom, that a Copyholder in Fee may cut down Trees and sell them at his Pleasure, but otherwise it is of a Copyholder for Life. Between *Rooke* and *Huggens* adjudg'd. *2 Danv.* 426.

It is a good Custom, that a Copyholder for Life by Custom, who may name his Successor, may cut Timber Trees, and convert them at his Pleasure. *Ibid.*

Custom to
turn a Plow
on another's
Land.

It is a good Custom, that when one is at Plough he may turn his Plough upon the Land adjoining be it sow'd or not. And it is a good Custom to dry Nets upon the Land of another Man in Favour of Fishing and Navigation. *Ibid.*

Herriot.

A Custom, that the Lord may take for his Herriot the Beast of a Stranger Levant and Couchant on the Land, is not good, but the Cattle of a Stranger may be distrain'd for an Herriot. *2 Danv.* 427.

Custom to
distrain at any
Place within
the Manor.

Where by Custom the Homage of the Manor hath used time out of mind to make By-Laws for the better ordering the Tenants of the Manor touching their Common under a Pain, it is a good Custom that the Lord of the Manor hath used time out of mind, &c. to distrain the Cattle of him that broke the By-Laws for the Penalty in any Place within the Manor, though it be within the proper Soil of the Lord, or others, and not in the Lands of the Offender, for this is not issuing out of the Land. *15 El.* adjudg'd. *2 Danv.* 427.

Watermen.

It is a good Custom, that the Corporation of *Gravesend* have used time out of Memory to maintain a Barge for Passengers between *Gravesend* and *London*, and that no Foreigner ought to carry any Person from *Gravesend* to *London* without License of the Company of Watermen of

of *Gravesend*. *M. 5 Jac. B. R.* between *Pincocke* and *Saunders*, adjudg'd upon Evidence at the Bar. 2 *Danv.* 428.

It is a good Custom, that the Mayor and Commonalty of *London* have had of every Master of a Ship 8 d. per Tun in the Name of Weighage for every Tun of Cheese brought from any Place in *England* to the Port of *London*, for the Liberty of bringing it into the Port, which is a Place of Safety, is a sufficient Consideration; and the Mayor and Commonalty have the View and Correction of the River *Thames*. *Mich. 33 Car. 2.* between the Mayor of *London* and *Hunt*. 3 *Lev.* 37. adjudg'd upon a Writ of Error in *Cam' Scac'* and the Judgment affirm'd accordingly.

Custom to levy 8 d. per Tun by the City of *London*.

The Lord of a Manor may prescribe to keep Toll. and repair a Wharf within the Manor & *ratione inde* to have Toll of all Goods landed within the Manor, tho' not upon the Wharf, for the landing upon the Soil is an Easement, and all the Lands in the Manor were the Lord's originally, and this is in nature of a Toll-Traverse. *Trin. 7 W. & M.* between *Crisp* and *Belwood*. 1 *Lev.* 97. 3 *Lev.* 424. adjudg'd.

If the Lord of a Copyhold by Custom claims to have a Fine of the Copyholder upon every Alteration of the Lord, be it by Alienation or otherwise, this is a void Custom as to the Alteration or Change of the Lord by the Act of the Lord himself, for by such means the Copyholders might be oppress'd by the Multitude of Fines by the Act of the Lord. *Co. Lit.* 59 b.

Fine upon the Alteration of a Lord.

But it is a good Custom, that the Copyholder hath used to pay a Fine upon the Alteration of the Lord by the Act of God, as by Death of the Lord. *Co. Lit.* 59 b.

It is a good Custom in a Copyhold Manor, that a Feme Covert with or without the Consent of her Husband may devise her Copyhold Land to her Husband or whom else she pleases. *Pasch. 25 Eliz. Moor* 123. *Pl.* 268. *per Curiam.* 2 *Danv.* 430.

Devise.

Six Jurors.

A Custom in an inferior Court to try Issues by six Jurors is not good, though many Courts have us'd it, and many Judgments depend thereupon. *Trin. 8 Car. B. R.* between *Tredinwicke* and *Perryman*, adjudg'd in a Writ of Error upon a Judgment in *Bodmyn* in *Cornwall*, and the Judgment revers'd accordingly, tho' it then appear'd to the Court by many Certificates that more than twenty Courts in *Cornwall* have the same Customs and infinite Trials there accordingly. *2 Danv. 433.*

If there be a Custom in an inferior Court, that if a Man brings an Action against another there, and the Defendant appears and pleads to Issue, and at the Day of Trial the Defendant being solemnly call'd does not appear, nor find Pledges *qui eum manucapere voluerint* to have his Body from Court to Court at every Court thereafter to be held till the Plea be determin'd, as he ought by the Custom; but in Contempt of the Court *recessit & defaultam facit*, and Judgment is thereupon given, yet this is not a good Custom, but utterly unreasonable; but they ought according to Law to take the Inquest by Default, for if he had appear'd and staid in Prison without finding Pledges, yet they ought not to have given Judgment against him if he would have pleaded to Issue. *Trin. 11 Car. B. R.* between *Burges* and *Sparke per Curiam* adjudg'd, and such Judgment given in *Plimouth* revers'd accordingly. *Intratur Hill. 12 Car. Rot. 576. 2 Danv. 433.*

Uncertainty.

The Custom of Tanistry of *Ireland*, that the Land shall descend *seniori & dignissimo Viro Sanguinis & Cognominis* of him that died seiz'd is not good, for the Uncertainty of the Person and Estate. *2 Danv. 435.*

But a Custom, that it shall descend to the most worthy of the Blood, is good. *2 Danv. 435.*

Infants.

If a Custom be, that when a Copyhold descends to any Man, a Proclamation shall be made at three several Courts that he shall come to be admitted, and if he does not come at any of the several Courts and pray to be admitted, it shall

be forfeited to the Lord; yet an Infant is not comprehended within this Custom, because by Intendment of Law he cannot make Claim. Co. 8. *Lechford* 100 b.

So where a Surrender is made to the Use of another, and he dies before Admittance, his Heir being an Infant. 3 *Mod.* 221, 226. adjudg'd upon a Writ of Error, and the Judgment affirm'd accordingly by three Judges; *contra* the Chief Justice, who said, that the Estate remaining in the Surrenderer till Admittance, the Infancy can not protect an Estate which the Infant had not. 2 *Danv.* 438.

So for the Cause aforesaid Men of unsound Memory in Prison, and out of the Realm, are not within such Custom. Co. 8. Sir *Richard Lechford* 100 b. *Ibid.*

If the Custom of the Manor be, that if any Forfeiture of Copyholder in Fee surrenders out of Court, and Copyhold. he to whose Use it is surrendred does not come in at the Court to take his Copyhold after three Proclamations made, that then the Lord may seize the Copyhold as forfeited. And a Copyholder in Fee surrenders to the Use of another for Life, the Remainder over in Fee, and the Tenant for Life does not come into Court to take his Copyhold after three Proclamations made according to Custom, upon which the Lord seizes the Copyhold as forfeited; and after *Cestuy que use* for Life dies, he in the Remainder shall not be bound by the not coming in of the Lessee, for the Custom being in Destruction of an Estate, shall be taken strictly, and so it shall be intended only of Tenant in Fee in Possession, and not in Remainder, as this Case is, and so this is out of the Custom. P. 44 *El. B. R.* between *Baspoole* and *Long* adjudg'd. 2 *Danv.* 439.

If there be a Custom within a Manor, that if Tenant by a Man takes to Wife any customary Tenant of the Courtesy. the Manor, and has Issue, and overlives his Wife, he shall be Tenant by the Courtesy. And a Man marries one to whom during the Coverture a customary

stomary Tenement descends, and has Issue by her, and she dies, yet he shall not be Tenant by the Courtesy. *Trin. 29 Eliz. Sir John Savage's Case. 2 Leon. 109. adjudg'd. 2 Danv. 440.*

Same Case cited to have been adjudg'd because the Custom extended only where the Wife was a Copyholder at the Time of the Marriage. *2 Leon. 208.*

Custom of
London.

If there be a Custom in *London*, that none ought to intermeddle with the Art of a Weaver there but only those who are free of the Guild, if a Stranger receives Silk in *London*, and carries it to *Hackney* and weaves it there, and then brings it back again to *London* and receives his Pay for it, this is not any intermeddling in *London* against the Custom tho' the Contract was made in *London*. *Hill. 43 Eliz. between the Warden and Corporation of Weavers in London and Brown. Cro. El. 803. adjudg'd.*

Dower.

If there be a Custom within a Manor, that the Wife shall be endow'd of the Moiety of all such Copyhold Lands as her Husband was seiz'd of, and a Copyholder dies, and his Wife is endow'd of a Moiety, and his Son and Heir having the other Moiety, dies, the Wife of the Son shall be endow'd of the Moiety of this Moiety, for this is directly within the Custom. *Mich. 14 Car. 2. between Baker and Berisford, Raym. 58. adjudg'd. 2 Danv. 440.*

Gavelkind.

If *A.* being seiz'd in Fee of Gavelkind Lands, upon his Petition in Parliament it is enacted, that his Lands shall be disgavell'd to all Intents and Purposes, and descendable as Lands at Common Law, to the eldest Son only; by this Act the Custom to devise them is not taken away, for it is a meer collateral Custom, and no part of the Custom of Gavelkind: And tho' by the first Words they shall be disgavell'd to all Intents and Purposes, yet they are restrain'd by the subsequent Words, and shall descend as Lands at Common Law. *Hill. 13 & 14 Car. 2. between Wiseman and Cotton, 1 Levin. 97. adjudg'd, & per Curiam*

Curiam the Act being made upon the Petition of A. it cannot be presum'd he petition'd to destroy his Privilege of devising, &c. 2 *Danv.* 441.

See *Title Copyhold.* London.

Custos Rotulorum.

NO Person shall be nominated and appointed to the Office of *Custos Rotulorum* within any Shire of this Realm of England, Wales, and other the King's Dominions, but such as shall have a Bill sign'd with the King's Hand for the same, which shall be a sufficient Warrant to the Lord Chancellor or Keeper to make a Commission authorizing the same Persons to be *Custos Rotulorum* until another shall be appointed as aforesaid. Stat. 37 H. 8. cap. 1.

And every *Custos Rotulorum* shall nominate and appoint to the Office of Clerk of the Peace such able Person instructed in the Laws of this Realm as shall be able to exercise and occupy the same; to hold during the Time that the said *Custos Rotulorum* shall exercise his Office. And it shall be lawful for the Clerk of the Peace to execute the said Office by himself or a sufficient Deputy. *Ibid.*

Provided, that the Archbishop of York, Bishops of Durham and Ely, and their Successors, and every other Person who have Authority to make and constitute any of the said Officers within any County Palatine or other Place, may enjoy the same Liberty and Authority as heretofore. *Ibid.*

The Lord Chancellor or Lord Keeper shall at all times hereafter, without any Bill to be sign'd by the King's Hand, appoint such Person to be *Custos Rotulorum* in every Shire as in their Discretion shall be thought able and meet to exercise the same; and such *Custos Rotulorum* may exercise the same Office by himself or his sufficient Deputy in as ample and large manner as if the said Act of 37 H. 8. had never been made. Stat. 3 & 4 Ed. 6. cap. 1.

Saving the Right of others who have Authority to appoint the *Custos Rotulorum* in any County Palatine, &c. *Ibid.*

It is enacted, that the nominating and appointing of the *Custos Rotulorum* throughout all the Counties of this Realm shall be as is directed by the Statute of 37 H. 8. cap. 1. Stat. 1 W. & M. cap. 21.

And the 37 H. 8.

And the *Custos Rotulorum*, or other Person to whom it doth belong to appoint the Clerk of the Peace, shall when the said Office shall be void appoint one able and sufficient Person residing in the County or Place for which he is appointed Clerk of the Peace, to execute the same by himself or a sufficient Deputy so long as he shall demean himself well in his said Office. *Ibid.*

Sessions may discharge a Clerk of the Peace for a Misdemeanor,

And appoint another in Default of the *Custos Rotulorum*.

And if any Clerk of the Peace shall misdemean himself in the Execution of his Office, and thereupon a Complaint and Charge in Writing shall be exhibited against him at the general Quarter-Sessions, it shall be lawful for the said Sessions upon due Proof thereof to suspend or discharge him from the said Office, and the *Custos Rotulorum*, or other Person to whom it shall belong to nominate the Clerk of the Peace, shall appoint another able and sufficient Person residing in the County or Place as aforesaid to be Clerk of the Peace in his Room. And in case of Neglect to make such Appointment before the next general Quarter-Sessions, it shall be lawful for the Justices of Peace at their general Quarter-Sessions to appoint such able and sufficient Person as aforesaid to be Clerk of the Peace in the room of the Person remov'd, who shall be liable to the Pains, Conditions, and Provisions herein express'd, and may be discharg'd by the Justices as aforesaid. *Ibid.*

Custos Rotulorum not to sell the Place of Clerk of the Peace.

And it shall not be lawful for the *Custos Rotulorum*, or other Person to whom it shall belong to appoint a Clerk of the Peace, to sell the said Place, or take any Bond or Assurance to receive any Reward, Money, Fee, or Profit, directly or indirectly, for appointing him, upon pain that such *Custos Rotulorum*, &c. and the Clerk of the Peace who shall so buy his Place, shall be disabled to hold their Places, and each of them forfeit double the Sum or Value of the Thing so given or taken, to be recover'd by him who will sue for the same by Action of Debt, Bill, Plaint, or Information, in the Courts at Westminster, where no Essoign, &c. shall lie. *Ibid.*

Oath of the Clerk of the Peace.

And every Clerk of the Peace before he enters upon his Office shall in open Sessions take the Oath following. *Ibid.*

I A. B. do swear, that I have not, nor will pay, any Sum or Sums of Money, or other Reward whatsoever, nor given any Bond, or other Assurance, to pay any Money, Fee, or Profit, directly or indirectly, to any Person or Persons whomsoever, for such Nomination or Appointment.
So help me God.

W. & M. c. 21.

Provided, that this Act shall not extend to the Clerk of the Peace in the Duchy of Lancaster, who holds his Office for Lives. *Ibid.*

Dama-

Damages. See Costs.

Damage Cleere.

THE Fee of *Damna Clericorum*, of Damage Cleere, 17 Car. 2. c. 6. shall cease and be for ever abolish'd; and if any Pro-Damage thonotary Clerk, or other Officer, shall take or exact any Cleere taken Sum of Money in the Name of *Damna Clericorum*, of Da- away. mage Cleere, or any thing in lieu thereof, he shall forfeit treble the Sum so taken, exacted, or demanded, to the Party griev'd. Stat. 17 Car. 21. cap. 6.

Darrein Presentment.

Assizes of Darrein Presentment shall be taken before *Magn. Char.* the Justices of the Bench and there determin'd. 9 H. 3. c. 13. *Mag. Char.* 9 H. 3. cap. 13. Justices de
'Tis provided, that Justices of *Nisi Prius* may give *Banco.* Judgment in an Assize of Darrein Presentment and *Quare Westm.* 2. *Impedit.* Westm. 2. 13 Ed. 1. cap. 30. 13 Ed. 1. c. 30.
And of *Nisi Prius* may take Assizes.

READINGS.

Assize of Darrein Presentment lies where one, Darrein Pre- or his Ancestors, have presented a Clerk to the sentment last Avoidance of a Church, and a Stranger upon where it lies. the Death, Resignation, &c. of the Clerk pre- sents a Clerk to the same Church in Disturbance of him that hath Right. *Terms of Law. Verb.*
Darrein Presentment. F. N. B. 32.

An Assize of Darrein Presentment doth not lie Not for Co- for one Coparcener against the other. *F. N. B. 32.* parceners.

An Assize of Darrein Presentment is not main- Nor for Baron tainable by the Baron alone in Right of his Wife without his without naming the Feme with him. *Bro' Title Feme.*

Darrein Presentment 3.

And where the King presents to my Advowson How when without a Title, I may have an Assize of Darrein the King pro- Presentment against the Incumbent alone without sents. naming the King, for no Procefs can be made out against him. *Ibid. 4.*

Days

Days in Bank.

21 H. 3. Leap-
Year.

TH E Day increasing in the Leap Year, and the Day before shall be holden for one Day. Stat. de Anno Bissextili, 21 H. 3.

51 H. 3. Days
in Bank, in
real Actions.

If a Writ come in the Utas of St. Michael, a Day shall be given thereupon unto the Utas of St. Hillarii; and if it come in the Quinzime of St. Michael, Day shall be given unto the Quinzime of St. Hillarii, if it come in the three Weeks after St. Michael, the Day shall be *Craftino Purificationis*; if within a Month after Michaelmas, in the Utas of the Purification, if in *Craftino Animarum*, then in the Quinzime of Easter, if in *Craftino Martini*, then in the three Weeks after Easter; if in the Utas of St. Martin, then in Easter Month; if in the Quinzime of St. Martin, then within five Weeks after Easter, and also there is Day specially given in *Craftino Ascensionis*, and it countervaileth as much as within five Weeks after Easter; if in the Utas of St. Hillary, in the Utas Trinitatis; if in the Quindena Hillarii, then in Quindena Trinitatis, and sometime in *Craftino* of St. John Baptist, if in *Craftino Purificationis*, then in *Craftino* & Utas of St. John Baptist; if in the Utas of the Purification, then in Quindena of St. John Baptist; if in Quindena Pasche, then in the Utas of St. Michael; if within three Weeks after Easter, then in Quindena of St. Michael; if within Easter Month, then within three Weeks of the Feast of St. Michael; if within five Weeks after Easter, or in *Craftino Ascensionis*, then within a Month after the Feast of St. Michael; if in the Utas of the Trinity, then in *Craftino Animarum*; if in Quindena Trinitatis, or in *Craftino* of St. John Baptist, then in *Craftino Martini*; if in Utas of St. John Baptist, then in the Utas of St. Martin; if in Quindena of St. John Baptist, then Day shall be given unto Quindena Martini, and so every Term shall answer to other. Stat. 21 H. 3.

52 H. 3. c. 12.
Days in a
Writ of Dow-
er. Darrein,
Presentment,
and Quare Im-
pedit.

In a Plea of Dower *unde nihil habet*, four Days shall be given in the Year at least, and more if conveniently may be, so that they shall have five or six Days in the Year at least, in assize of *darrein presentment*, and in a Plea of *quare impedit*, day shall be given from fifteen to fifteen, or from three Weeks to three Weeks, according to the Distance of the Place; and in a Plea of *quare impedit*, if the Disturber come not at the first day he is summoned nor cast an Essoign, he shall be attached at another Day, when if he come not, nor cast an Essoign, he shall be distressin by the great Distress, and if he come not, then

a Writ

a Writ shall go to the Bishop, that the Claim of the Disturber shall not be prejudicial to the Plaintiff. Stat. of Marlbridge 52 H. 3. c. 12.

In Summons and Attachments in Plea of Land, they 28 Ed. 1. c. 15. shall contain fifteen Days at the least, according to the In Summons Common Law, if it be not an Attachment of Assises, taken and Attach- in the King's Presence, or of Pleas before Justices in Eyre, ments in Plea during the Eyre. Stat 28 Ed. 1. c. 15. Art. super Chart. of Land, 15

In Trinity Term there shall be four common Days of Days. Return only, viz. In Crastino Sanctæ Trinitatis. In Oñabis 32 H. 8. c. 21. Sanctæ Trinitatis in quindena Sanctæ Trinitatis, & die Sanctæ Days of re- Trinitatis in tres Septimanas. turn in Trinity

And the said Term shall yearly begin the Monday next Term. after Trinity Sunday, for keeping of the Effoigns, Proffers, When it shall Returns, &c. as has been us'd to be done in the Day of begin and end. Return, commonly call'd In Oñabis Sanctæ Trinitatis, and the full Term shall begin th e Fryday next after Corpus Chri- fti Day, as heretofore hath been used, the Wednesday after Corpus Christi Day.

And if any Writ in any Real Action be returnable, In Return of Crastino Sanctæ Trinitatis, then Day shall be given in Crastino Writs in real Animarum, if In Oñabis Sanctæ Trinitatis in Crastino Sancti Actions. Martini, if In quindena Sanctæ Trinitatis in Oñabis Sancti Mar- tini, if A die Sanctæ Trinitatis in tres Septimanas in quindena Sancti Martini.

And if any Writ of Dower be returnable in Quindena Pasche, then Day shall be given, In Crastino Sanctæ Trinitatis, if A die Pasche in tres Septimanas in Oñabis Sanctæ Trinitatis, if A die Pasche in unum mensem in quindena Sanctæ Trinitatis, if A die Pasche in quinque Septimanas, or in Crastino Ascensio- nis Domini, then Day shall be given unto the Day of A die Sanctæ Trinitatis in tres Septimanas; and if any Writ of Dower be returnable in Crastino Sanctæ Trinitatis, then Day shall be given in Oñabis Sancti Michaelis, if in Oñabis Sanctæ Trinitatis in quindena Sancti Michaelis, if in quindena Sanctæ Trinitatis A die Sancti Michaelis in tres Septimanas, if A die Sanctæ Trinitatis in tres Septimanas A die Sancti Michaelis in unum Mensem.

And all common Writs and Procceses, as well personal In personal as mixt, which shall be returnable in Trinity Term, shall and mixt Acti- keep the said Returns of Crastino Sanctæ Trinitatis Oñabis ons. Sanctæ Trinitatis quindena Sanctæ Trinitatis, and A die Sanctæ Trinitatis in tres Septimanas, or one of them.

Provided that in such Cases and Procceses where spe- Special Re- cial Days have been us'd to be appointed for return of turns. Writs, the Justices may appoint special Days of return, at their Discretion. Ibid.

Pro-

Provided that the Days in Assize of Darrein Presentment, and in *Quare Impedit*, limited by the Statute of Marlbridge, and the days given in Attaint by the Statute of 5 Ed. 3. being not contrary to this Act, shall stand in their full Force, *Ibid.*

17 C. 1. c. 6.

Common Days of Return in Michaelmas Term.

Beginning of Michaelmas Term.

Days of Return in real Actions.

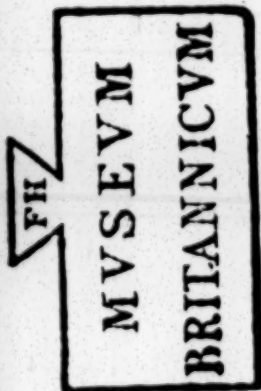
In Michaelmas Term there shall be six common Days of Return only, viz. *A die Sancti Michaelis in tres Septimanas, A die Sancti Michaelis in unum Mensem, in Crastino Animarum, In Crastino Sancti Martini, in Octabis Sancti Martini. A die Sancti Martini in quindecim dies. Stat. 17 Car. 1. c. 6.*

And the said Term of St. Michael, shall begin upon the said *Tres Septimanas*, except it happen on a Sunday, for the keeping of Essoins, Proffers, Returns. &c. and the full Term shall begin upon the *Quarto Die* of *tres Michaelis*, except it be of a Sunday, and then the Morrow after. *Ibid.*

And if any Writ in any Real Action. other than Writs of Entry for common Recoveries, and Writs of Right of Advowson, and Writs of Dower, *unde nihil habet*, hereafter mentioned, come in and be returnable in his Majesty's Court of Common Pleas, in the Day of Return of *Tres Septimanas Sancti Michaelis* then Day shall be given, in *Crastino Purificationis beate Marie*; and if, *A die Sancti Michaelis in unum Mensem*, then in *Octabis Purificationis beate Marie*, if in *Crastino Animarum*, then in *Quindena Pasche*, if in *Crastino Sancti Martini*, then *A die Pasche in tres Septimanas*, if in *Octabis Sancti Martini*, then *A die Pasche in unum Mensem*, if in *Quindena Sancti Martini*, then in *quinque Septimanas Pasche*, if in *Octabis Sancti Hillarii*, then in *Crastino Ascensionis Domini*; if in *Quindena Sancti Hillarii*, then in *Crastino Sancti Trinitatis*; if in *Crastino Purificationis beate Marie*, then in *Octabis Sancte Trinitatis*, if in *Octabis Purificationis beate Marie*, then in *Quindena Sancte Trinitatis*, if in *Quindena Pasche*, then *A die Sancte Trinitates in tres Septimanas*; if *A die Pasche in tres Septimanas*, then *A die Sancti Michaelis in tres Septimanas*, if *A die Pasche in unum mensem*, then *A die Sancti Michaelis in unum mensem*; if *A die Pasche in quinque Septimanas*, then in *Crastino Animarum*, if in *Crastino Ascensionis Domini*, then in *Crastino Sancti Martini*, if in *Crastino Sancti Trinitatis*, then in *Octabis Sancti Martini*, if in *Octabis Sancte Trinitatis*, then in *Quindena Sancti Martini* if in *Quindena Sancte Trinitatis*, then in *Octabis Sancti Hillarii*; if *A die Sancte Trinitatis in tres Septimanas*, then in *Quindena Sancti Hillarii. Ibid.*

Writs of Dower, and of Entry whereupon a common Recovery is to be tried.

And if any Writ of Dower, *Unde nihil habet*, or any Writ of Entry whereupon a common Recovery is to be tried, or Writs of Right of Advowson be returnable *A die Sancti Michaelis in tres Septimanas*, then a Day shall be given of Advowson. in *Octabis Sancti Martini*, if *A die Sancti Michaelis in unum mensem*



Mensem, then in *Quindena Sancti Martini*; if in *Crastino Animarum*, then in *Ostabis Sancti Hillarii*; if in *Crastino Sancti Martini*, then in *Quindena Sancti Hillarii*; if in *Ostabis Sancti Martini*, then in *Crastino Purificationis beate Mariæ*; if in *Quindena Sancti Martini*, then in *Ostabis Purificationis beate Mariæ*; if in *Ostabis Sancti Hillarii*, then in *Quindena Paschæ*; if in *Quindena Sancti Hillarii*, then a *Die Paschæ* in *tres Septimanas*; if in *Crastino Purificationis beate Mariæ*, then a *Die Paschæ* in *unum Mensem*; if in *Ostabis Purificationis beate Mariæ*, then a *Die Paschæ* in *quinque Septimanas*; if in *Quindena Paschæ*, then in *Crastino Ascensionis Domini*; if a *Die Paschæ* in *tres Septimanas*, then in *Crastino Sanctæ Trinitatis*; if in *Mense Paschæ*, then in *Ostabis Sanctæ Trinitatis*; if in *quinque Septimanas Paschæ*, then in *Quindena Sanctæ Trinitatis*; if in *Crastino Ascensionis Domini*, then a *Die Sanctæ Trinitatis* in *tres Septimanas*; if in *Crastino Sanctæ Trinitatis*, then a *Die Sancti Michaelis* in *tres Septimanas*; if in *Ostabis Sanctæ Trinitatis*, then a *Die Sancti Michaelis* in *unum Mensem*; if in *Quindena Sanctæ Trinitatis*, then in *Crastino Animarum*; if a *Die Sanctæ Trinitatis* in *tres Septimanas*, then in *Crastino Sancti Martini*. *Ibid.*

Provided, that in Writs of Dower *Unde nihil habet* after Issue join'd it shall not be necessary to have above fifteen Days betwixt the *Teste* and Return of the *Venire Facias*, or any other Process for the Trial of the said Issue, any more than in personal Actions. *Ibid.*

But the said Return, call'd *Crastino Ascensionis*, shall be good tho' there be not Fifteen Days between the *quarto Die* of the said Return and the *Essoign Day* of the Return of *Crastino Sanctæ Trinitatis*. *Ibid.*

And all Writs in personal Actions having Day from *tres Michaelis* until *Crastino Animarum* shall be good tho' there be not fifteen Days betwixt the *quarto Die* of *tres Michaelis* and the Day of *Essoign* of *Crastino Animarum*. *Ibid.*

All Writs of Summons *ad Warrantizand'* upon common Writs of Sum- Recoveries and Writs of Right of Advowson shall be mons and abridg'd to five Returns, as Writs of Summons *ad War-* Writs of *rantizand'* in Writs of Dower *Unde nihil habet* have hereto- Right of fore us'd to be. *Ibid.* Advowson

All common Writs and Process returnable in *Michael-* abridg'd, *mas Term* shall have the aforesaid Returns. *Ibid.*

Provided, that where Process at special Days has been Special Re- usually appointed, the Justices may appoint special Days turns. of Return at their Discretions. *Ibid.*

Provided, that the Days in *Affize of Darrein Presentment Darrein Pre-* and in Plea of *Quare Impedit* appointed by the Statute of *sentment*. *Marlbridge*, and the Days given in *Attaint* by the Statute *Quare Impedit*.

5 Ed. 3. and by the Statute of 23 H. 8. not contrary to this Act shall remain in full Force. *Ibid.*

4 & 5 W. & M. c. 18. Pleas to Informations to stand notwithstanding the Demise of the Crown.

1 Ann. c. 8. Proceedings on Indictments and Process for Debts due to the Crown not discontinued by a Demise.

No Commissions of Assize, Writ of *Si non omnes*, Writ of Assistance, or Commission of the Peace, shall be determin'd by the Demise of the Crown, but continue in Force for six Months, unless superseded and determin'd by the Successor. And no original Writ of *Nisi Prius*, Commission, Process, or Proceedings whatsoever issuing out of any Court of Equity, nor any Process or Proceeding upon any Office or Inquisition, nor any Writ of *Certiorari* or *Habeas Corpus* in any Matter or Cause either criminal or civil; nor any Writ of Attachment or Process for Contempt, nor any Commission of Delegacy in Review for any Matters Ecclesiastical, Testamentary, or Maritime, or any Process thereupon, shall be determined, abated or discontinued by the Demise of the Crown, but shall remain in Force as if there had been no such Demise. *Ibid.*

No original Writ &c. discontinued by a Demise.

Upon the Demise of the Crown all Pleas to Informations in B. R. shall stand and be good in Law without calling Defendants to plead again to the same, unless the Defendants desire so to do, and make Request to the said Court for that purpose within five Months after such Demise. Stat. 4 & 5 W. & M. cap. 18.

No Writ, Plea, or Process, or other Proceeding, upon any Indictment or Information for any Offence or Misdemeanor, or any Writ, Process, or Proceeding, for any Debt or Account that shall be due, or to be made to the Crown for or concerning any Lands, Tenements, or other Revenue belonging to the same, that shall be depending at the time of the Demise of the Crown, shall be discontinued or put without Day by reason of such Demise, but shall continue in full Force, and be proceeded upon notwithstanding such Demise. Stat. 1 Ann. cap. 8.

And no Commission of Assize, Oyer and Terminer general Goal Delivery, or of Association, Writ of Admittance, Writ of *Si non omnes*, Writ of Assistance, or Commission of the Peace, shall be determin'd by the Demise of the Crown, but continue in Force for six Months, unless superseded and determin'd by the Successor. And no original Writ of *Nisi Prius*, Commission, Process, or Proceedings whatsoever issuing out of any Court of Equity, nor any Process or Proceeding upon any Office or Inquisition, nor any Writ of *Certiorari* or *Habeas Corpus* in any Matter or Cause either criminal or civil; nor any Writ of Attachment or Process for Contempt, nor any Commission of Delegacy in Review for any Matters Ecclesiastical, Testamentary, or Maritime, or any Process thereupon, shall be determined, abated or discontinued by the Demise of the Crown, but shall remain in Force as if there had been no such Demise. *Ibid.*

This Act to extend to Ireland, the Islands of Jersey and Guernsey, and to the English Plantations in America. *Ibid.*

READINGS.

Day defin'd.

Four Dies in legal Understanding is the Day of Appearance of the Parties or Continuance of the Plea.

In real Actions there are *Dies communes*, common Days, and in all Summons there must be fifteen Days after the Summons before the Appearance;

pearance; but if the Original be return'd *tarde*, and Summons *alias* goeth forth, there must be nine Returns between the Teste and the Return: And so in other judicial Proceſs in real Actions.

1 *Inst.* 134.

And before the Statute of *Articuli super Cartas*, in all Summons and Attachment in Plea of Land there should be contained the Term of fifteen Days. And it appeareth as well by the Statute as by ancient Authors of the Law who wrote before the Statute, that this was the ancient Common Law, and the Reason of these long Days given in real Actions was, (the Recovery being so dangerous, that the Tenant might the better provide him both of Answer and of Proofs; but by Consent they may take other the common Days. 1 *Inst.* 134.

In Proceedings against an Offender in capital Cases anciently the Party convicted had thirty or forty Days to move in Arrest of Judgment, but this Privilege is now gone by Disuser, and great Expedition is now made in Pleas of the Crown concerning the Life of Man, *Sed de Morte Hominis nulla est Cunctatio longa*. Says Sir Edward Coke in his first Institutes, The Use of the King's Bench at this Day is, that if the Offence be committed in another County than where the Court sits, and the Indictment be remov'd by *Certiorari*, there must be fifteen Days between every Proceſs and the Return thereof; but if it be committed in the same County where the Bench sits, they may proceed *de Die in Diem*, but this they will do very rarely. 1 *Inst.* 134.

Forty Days formerly given in criminal Cases to move in Arrest of Judgment.

There is a Day call'd *Dies specialis*, as in an Assize in the King's Bench or Common Pleas the Attachment need not be fifteen Days before the Appearance; otherwise it is before Justices assign'd; but generally in Assizes the Judges may give a special Day at their Pleasure, and are not bound to the common Days, and these Days they may give as well out of Term as within. So upon an Impar lance the Court may give any special or particular Day, but that must be in the

Fifteen Days between Proceſs and Return in B. R.

Special Days.

Term time. And likewise in a *Scire Facias* upon a Fine or a Recovery in a real Action, because it is a Writ of Execution. And so it is in a *Per qua Servitia*, and the like. And in all judicial Writs in Proceſs againſt an Infant to judge of his Age, or where the Husband prayeth in Aid of his Wife, or in a *Pone* at the Suit of the Defendant, there need not be fifteen Days. Also after a Demurrer in Law the Court may give what Day they will. And it is worthy the noting, that if in an Affize the Parties be adjourn'd to *Westm. usque 15 Pasch.* there they be not demandable till the fourth Day; but if it be adjourn'd *usque Diem Luna*, or *Diem Martis*, there the Parties are demandable on that Day. 1 *Inst.* 134.

Days of
Grace.

There is a Day of Grace, *Dies Gratia*, or a Day of Courtesy, and regularly this Day is granted by the Court at the Prayer of the Demandant or Plaintiff in whose Delay it is, and never at the Prayer of Tenant or Defendant. But it is worthy of Observation, that a Day of Grace is never granted where the King is Party by *Aids Prier* of the Tenant or Defendant, nor where any Lord of Parliament or Peer of the Realm is Tenant or Defendant; and sometime the Day that is *quarto die post* is call'd *Dies Gratia*, for the very Day of Return is the Day in Law, and to that Day the Judgment hath Relation, but no Default shall be recorded till the fourth Day be past, unless it be in a Writ of Right where the Law alloweth no Day but only the Day of Return. 1 *Inst.* 135.

Days by the
Writ and by
the Roll.

There is also a Day of Appearance in Court by the Writ and by the Roll; by Writ when the Sheriff returns the Writ, by the Roll when he hath a Day by the Roll, and the Sheriff returns not the Writ, there the Defendant to save himself from corporal Pain, as by Imprisonment, or to prevent the loss of Issues, or to save his Freehold or Inheritance, may appear by the Day he hath by the Roll. *Ibid.*

Not,

Note, It is said commonly, the the Day of *Nisi Prius* and the Day in Bank is all one Day; that is, to be understood as to Pleading, but not to other Purposes. *Ibid.*

There are *Dies Judirici* and *Dies non Judirici*; *Dies Judirici* *Dies Judirici*, except it be in Assizes, are only and not *Juridici* in the Term; and there are also in the Term *Dies non Judirici*, as in all the four Terms the Sabbath-Day, and in *Michaelmas* Term the Feast of All-Saints and of All-Souls, in *Hillary* Term the Purification of the Blessed Virgin *Mary*, and in *Easter* Term the Feast of the Ascension, are not *dies Juridici*, but set apart for divine Service. As for *Trinity* Term it sometimes had seven Days of Return, and was as long as *Michaelmas* Term *Trinity Term shortened.* is now; but for avoiding of Infection in that hot time of the Year, and that Men might not be hindred in their Harvest, three Returns were cut off by the Statute 32 *H.* 8. and are become *Dies non Judirici*.

If the Defendant after Appearance departs in Despite of the Court, Judgment shall be against him.

If the Defendant appears, and the Court gives a Day to another Term, at which Day he makes Default, yet no Judgment shall be given, but Process shall be awarded in this Case. 2 *Danv.* 476.

If after Issue found for the Plaintiff at the *Nisi Prius* if a Day be given *in Banco*, and the Defendant makes Default, Judgment shall be given against him. 2 *Danv.* 477.

By the Common Law all Proceedings upon any Indictment, Information, or popular Action, whereon no Judgment had been given were wholly determin'd by the Demise of the King, and nothing remain'd but the Indictment or Information, original Writ or Bill, which were put without Day, till re-continued by Re-attachment to bring in the Defendants to plead *de novo*; but this is fully provided for by 4 & 5 *W.* 3. 18. & 1 *Anna* 8. by which it is enacted, that such

Process not discontinued by the Death of the King. Appeals.

Process, &c. shall continue in the same Force after the King's Demise as it would have had if he had lived. 2 *Hawk.* 299.

As for Appeals, it is not any where said that the Pleas and other Proceedings therein, being put without Day by the Demise of the King, might not be reviv'd by a special Re-attachment in the same manner as in any other Action; however it is certain at this Day, that by the Force of 1 *Ed.* 6, 7. & 1 *Anna* 8. neither the Writ nor Bill, nor any Plea nor Proceeding therein, shall be any way discontinued or put without Day by such Demise. 2 *Hawk.* 299.

Discontinuance by Death of Justices, &c.

'Tis holden by some, that all Causes whether civil or criminal are discontinued, and by others, who seem to speak more accurately, that they are put without Day by the Justices before whom they were depending, not coming on the Day to which they are continued, whether such Absence were occasion'd by Death or any other Cause; but it seems to be agreed by all, that a Cause so discontinued or put without Day cannot be reviv'd without a Re-summons or Re-attachment, which if they are special, may revive the whole Proceedings, but if general, the original Record only: Nor hath any Statute remedied this Mischief except in the Case of *Affizes* and *Juris Utrum*, which are provided for by 1 *Ed.* 6. cap. 7. *Ibid.* 300.

How reviv'd,

Death of Persons beyond Sea, or whose Deaths are conceal'd.

19 *Car.* 2. c. 6.

W Hereas Lords of Manors and others have us'd to grant Estates by Copy of Court-Roll for one, two, or more Life or Lives, and have also granted Estates by Lease for one or more Life or Lives, or for Years determinable upon one or more Life or Lives; it is enacted, that if such Person or Persons for whose Life or Lives granted be beyond Sea, or absent themselves in this Realm for seven Years together, and no sufficient Proof be made of their Lives in any

any Action for Recovery of such Tenements by the Lessors or Reversioners, then the Person or Persons upon of his Life, whose Life or Lives such Estate depended shall be accounted as naturally dead, and the Jury shall be directed taken to be to give their Verdict accordingly. *Stat. 19 Car. 2. cap. 6.* dead.

And in any such Action the Lessor or Reversioner may challenge any Juror return'd for the Trial of the Cause if the greatest part of his real Estate is held by Lease or on the Copy for Lives. *Ibid.*

Provided, that if any Person be evicted out of any Lands or Tenements by virtue of this Act, and afterwards the Persons on whose Lives such Estate depended if such Person shall return, or be made appear to be living, or to have been living at the Time of the Eviction, then the Person evicted, his Executors or Assigns, may re-enter and hold the said Tenements during the Lives of such Persons prov'd to be living, and recover the full Profits of such Lands and Tenements, and lawful Interest, from the time he was evicted, as well if the Persons on whose Lives the Estate depended were dead at the time of the Action brought, as if the said Persons were then living. *Ibid.*

Any Person who shall have any Claim or Demand to any Remainder, Reversion, or Expectancy to any Estate after the Death of any Person within Age, married Woman, or any other Person whatsoever, upon Affidavit of his Title in Chancery, and that he hath Cause to believe that such Minor, married Woman, or other Person is dead, and their Death conceal'd, upon Motion in the Court of Chancery shall have an Order, that the Person concealing, or suspected to conceal such Person, (on due Service of the Order) shall produce and shew to such Persons, not exceeding two as shall be nam'd by the Party prosecuting such Order, the Person conceal'd as said; and on Refusal or Neglect to produce or shew such Person, the Court shall order the Person so conceal'd to be produc'd in the Court of Chancery, or before Commissioners thereby appointed, two of which Commissioners shall be nominated by the Party prosecuting such Order at his Costs and Charges; and on Refusal to produce the Person conceal'd, such Person shall be taken to be dead, and the Person claiming the Remainder, or Reversion, &c. may enter upon such Lands and Tenements as if the Person conceal'd was actually dead, *Stat. 6 Ann. cap. 18.*

And if it shall appear to the said Court by Affidavit that such conceal'd Person is, or lately was, at some certain Place beyond Sea, then the Party prosecuting such Order may at his own Charges send over one or both the

Proviso for
Damages
where such
Person is
living.

Persons appointed by the said Order to view the Person conceal'd; and in Case of Refusal or Neglect to produce him, and a Return made thereof, such Person conceal'd shall be taken to be dead, and the Person claiming a Title to the Reversion, &c. may enter upon such Lands as aforesaid. *Ibid.*

Provided, that if it appear upon any Action brought that the Person for whose Life such Estate is holden was alive at the time of making such Order, then the Person having any Estate or Interest determinable upon such Life, their Executors or Assigns may maintain an Action against those who since the said Order have receiv'd the Profits, and recover full Damages from the time of the Eviction. *Ibid.*

Provided, that if any Person having any Estate or Interest determinable upon the Life of another Person shall make appear to the Court of Chancery that he hath us'd his utmost Endeavours to procure such Person on whose Life such Estate or Interest doth depend to appear according to the Order of the said Court, and that he cannot procure or compel such Person to appear, and that the said Person was living at the time of the Order return'd and fil'd, then it shall be lawful for the Person holding such Estate to continue in Possession and receive the Rents and Profits thereof as if this Act had never been made. *Ibid.*

Persons hold-
ing over after
the Death of
such Persons
Trespassers.

And every Person who as Guardian or Trustee for any Infant, and every Husband seiz'd in Right of his Wife only, and every other Person having an Estate determinable upon any Life, who shall after the Determination of such particular Estates hold over and continue in Possession of any Lands, &c. shall be adjudg'd Trespassers; and any Person entituled to them after the Determination of such particular Estates or Interests, their Executors, &c. shall recover the full Value of the Profits receiv'd during such wrongful Possession. *Ibid.*

Debt to the King.

Mag. Char.
9 H. 3. c. 8.
Sureties not
answerable
where the
Debtor is suf-
ficient.

WE, or our Bailiffs, will not seise any Land or Rent for Debt as long as the Debtor hath Goods and Chattels sufficient, and is ready to satisfy the Debt; nor shall his Pledges be distrain'd as long as he is sufficient; but if the principal Debtor fail to pay the Debt, or have nothing wherewith to pay it, the Pledges shall answer

answer the Debt, and may have the Lands and Rents of the Debtor until they be reimburs'd, except the Debtor can shew himself acquitted against the said Sureties. *Stat. Mag. Char. 9 H. 3. cap. 8.*

If one die who holdeth of us Lay-Fee, the Sheriff or Mag. Char. Bailiff by virtue of our Letters Patents may attach and 9 H. 3. c. 18. inroll all his Goods and Chattels found in the said Fee to King's Debt the Value of the Debt by the Sight and Testimony of to be satisfied lawful Men, so that nothing be taken away by his Exe-first. cutors until the Debt be paid. *Stat. Mag. Char. 9 H. 3. cap. 18.*

Sheriffs and others who collect the King's Debts shall 3 Ed. 1. c. 19. acquit the Debtors at the next Account after they have *Westm. 1.* receiv'd such Debts, and then the Debt shall be allow'd in King's Debt-the Exchequer, and no more come in the Summons, ors on Pay-upon pain that the Sheriff, &c. doing otherwise shall pay ment to be ac-to the Plaintiff twice as much as he hath receiv'd, and quitted in the make Fine to the King. And the Sheriff shall give Exchequer. a Tally to those that have paid their Debts, and shew the Summons to all Debtors that demand a Sight thereof gratis, on pain of being grievously punish'd. *Stat. 3 Ed. 1. cap. 19. Westm. 1.*

The King willeth, that Distresses for his Debts shall 28 Ed. 1. c. 12. not be made upon Beasts of the Plow if other can be Distresses not found, and that over great Distresses be not taken or to be made on driven too far; and if the Debtor can find able Sureties Beasts of the to pay before the Day limited to the Sheriff, the Distress Plow. shall be releas'd, on pain of grievous Punishment to the Offender. *Stat. 28 Ed. 1. cap. 12. Art. super Char.*

All Obligations and Specialties concerning the King 33 H. 8. c. 39. and his Heirs, or made to his or their Use, shall be made Securities to to his Highness and to his Heirs Kings in his or their the King how Name or Names by these Words, *Domino Regi*, and to no to be made. other Person and Persons, to his Use, and to be paid to his Highness by these Words, *Solvend' eidem Domino Regi Hered' vel Executoribus suis*, with other Words us'd in com-mon Obligations; which Obligations and Specialties shall be in the nature of a Statute-Staple, and shall come, re-To be in the main, and be, to the Heirs or Executors of the King as nature of a he shall assign or appoint. And if any Person take any Statute-Sta-Obligation to the Use of the King or his Heirs otherwise ple. than as aforesaid, he shall suffer such Imprisonment as shall be adjudg'd by the King or his honourable Council. *Stat. 33 H. 8. cap. 39.*

And the King in all Suits upon any Obligation or Spe- Costs given cialty made to him, or his Use, shall recover his Costs the King. and Damages as common Persons us'd to do. *Ibid.*

And

Debts to be
sued for in
the proper
Courts.

And every Suit which shall be prosecuted for any Debt or Duty due to the King in the Office and Courts of the Exchequer, Dutchy, Augmentations, Surveyors, Wards, and First-Fruits, shall be severally sued in the Courts and Offices, in which, or by reason of which Court and Office, the same Debt or Duty did first grow due, or in which the Recognizance, Obligation, or Specialty, shall remain. *Ibid.*

And the said several Courts are authoriz'd to hear and determine such Suits, and to award Execution against the Body, Lands, and Goods of the Party condemn'd.

Jurisdiction of
the said
Courts.

And the said Courts are authoriz'd to hear and determine all manner of Debts, Detinues, Trespasses, Accompts, Reckonings, Wastes, Deceits, Negligences, Defaults, Contempts, Complaints, Riots, Quarrels, Suits, Strifes, Controversies, Forfeitures, Offences, and other Things whatsoever, which shall be prosecuted for any Cause assign'd or appointed to the several Directions, Orders and Governances of the same Courts, or which may concern the same, wherein the King shall be only Party; and also all States for Term of Years between Party and Party concerning the Premises, and to punish every Offender which shall be convicted of any of the Premises, (all Treasons, Murders, Felonies, Estates, Rights, Titles, and Interests, as well of Inheritance as of Freehold, other than Jointers, for Term of Life only excepted.) *Ibid.*

And every of the said Courts are impower'd to set such Fines, Penalties, and Amercements, upon Parties, Sheriffs Officers, and other Persons, for their Defaults, Contempts, Negligences, or Misdemeanors, as to the said respective Courts shall seem expedient. And all Trials in the said several Courts shall be by due Examination of Witness, Writings, Proofs, or such other Ways as by the said several Courts shall be thought expedient.

33 H. 8. c. 39.

And in all Actions and Suits in any of the Courts aforesaid for any Debt due to the King by reason of any Attainder, Outlawry, Forfeiture, Gift of the Party, or by any other collateral Ways or Means, it shall be sufficient in Law to shew and alledge generally, that the Party to whom the said Debt did belong, such a Year and Day did give the same to the King, or was attainted, outlaw'd, &c. whereby the said Debt did accrue to the King, shall be of the same Force and Effect as if the whole Matter had been alledg'd and declar'd at large according to the Order of the Common Law. *Ibid.*

King's Suit to
be preferr'd.

And if any Suit be commenc'd, or Process awarded, for the King, for the Recovery of his Debts, the same shall be preferr'd before any other Persons, and Execu-

tion

tion awarded accordingly, so that the King's Debt be commenc'd. or Proceſs awarded for the ſaid Debt, before Judgment given for the ſaid other Perſon. *Ibid.*

And all Manors, Lands, Tenements and Hereditaments, Heirs, &c. li- which ſhall deſcend, revert, or remain in Fee-Simple or ble to the Fee-Tail, general or ſpecial, to any Perſon by the Death King's Debts. of his Anceſtor, or by Gift of his Anceſtor, whoſe Heir he is, which ſaid Anceſtor ſhall be indebted to the King, or to his Uſe, by Judgment, Recognizance, Obligation, or other Specialty, ſuch Manors, Lands, &c. ſhall ſtand charg'd with the Payment of the ſaid Debt. *Ibid.*

And the King ſhall not be barr'd, delay'd, or excluded, Altho' the to receive his Debts of the Heirs of any Perſon indebted Word Heir be to him altho' the Word Heir be not compriz'd in ſuch not in the Se- Recognizance, &c. altho' ſuch Heir ſhall alledge that he curity. hath not any Manors, Lands, &c. deſcended to him, but only ſuch as are entail'd or given to him by his Anceſtors.

Provided, that the King be at Liberty to recover his Debts of the Executors or Adminiſtrators of the Debtor if he have Aſſets in his Hands. *Ibid.*

Provided, that if the ſaid Manors, Lands, &c. ſhall be recover'd from any ſuch Heir by any former Title, that then they ſhall be acquitted and diſcharg'd of the Payment of ſuch Debts. *Ibid.*

Provided, that if any Perſon of whom ſuch Debt or Duty is demanded ſhall alledge or plead any ſufficient Cauſe in Bar, or Diſcharge thereof, and ſufficiently prove the ſame, the ſaid reſpective Courts are authoriz'd to allow thereof, and to acquit and diſcharge the Perſon ſo impleaded or ſued. *Ibid.*

And if any Manors, Lands, &c. ſhall be chargeable with the Payment of ſuch Debts, and ſhall be in the 33 H. 8. c. 39. Seisin and Poſſeſſion of divers Perſons other than the Obligors, that then all the ſaid Manors, Lands, &c. and every Parcel, ſhall be wholly and entirely, and in no wiſe ſeverally liable and chargeable with the Payment of the ſaid Debts. *Ibid.*

The Liberties and Privileges of the Dutchy of Lancaſter Dutchy of are ſaved, and it is provided, that all Proceſs and Execu- Lancaſter. tions for Debts growing in the Exchequer ſhall be made by ſuch Officers in the ſame Court as hath been uſ'd heretofore, and with ſuch kind of Proceſs and Executi- ons as by this Act is limited, *Ibid.*

READINGS.

Remedy for
the King's
Debts by the
Common
Law.

Where the
Sureties shall
be excus'd.

Writ de Plegiis
acquietandis.

Upon *Magna Charta*, cap. 8. Sir *Edward Coke* observes, that by the Common Law the King for his Debt had Execution of the Body, Lands, and Goods of the Debtor, and that this is an Act of Grace restraining the Power the King had before; and that if it can be made appear to the Sheriff that the Goods and Chattels of the King's Debtor are sufficient to levy the Debt upon, then the Sheriff ought not to extend the Lands and Tenements of the Debtor, or of his Heir, or of any Purchaser or Tertenant. 2 *Inst.* 19.

When the Principal is able, and yet his Ability cannot be made to appear, being in Money, Treasure, Debts owing, or the like, which he conceals, in that Case his Sureties shall be answerable; but where they can make it appear to the Sheriff that he may levy the King's Debt on the Principal, they shall be excus'd.

The Writ *de Plegiis acquietandis* lieth where a Man becomes Pledge or Surety for another to pay a certain Sum of Money at a certain Day, &c. if the Party doth not pay it at the Day, &c. if he who became Surety be compelled to pay the Money, he shall have this Writ against him who ought to have paid the same. But it hath been a Question whether the Writ lieth without shewing a Specialty, and it seemeth reasonable that it be maintainable although he have not any Specialty to prove it, for if he have a Writing, then he may have a Remedy thereupon by the Common Law or by Writ of Covenant or Debt, and then the Statute needed not to have been made. *F. N. B.* 137.

If the Sureties be distrain'd by the Sheriff, they shall have a special Writ upon the Statute; but if the Sureties be sued in the Common Pleas where the Principal is sufficient to pay the Debt, whether the Sureties may plead that, and aver that the principal Debtor is sufficient to pay it, or whether they shall have a Writ to the Sheriff to distrain

distrain them if the Principal be sufficient, is doubted. *F. N. B.* 137.

Under this Word *Debitum*, Debt, all things What is com- due to the King are comprehended; not only prehended un- Debts in their proper Sense, but Rents, Fines, der the Word *Debt*. Issues, Amerciaments, and other Duties receiv'd or levied by the Sheriff; for Debt in the larger Sense signifies whatever any Man owes. 2 *Inst.* 198. And where 'tis said in the Statute of *Westm.* 1. cap. 19. that the Heirs shall be answerable, this How the Heir is to be understood *quoad Restitutionem, sed non* is answerable. *quoad Pœnam*, that is, for the civil, but not for the criminal Part; for it is a Maxim in Law, *Pœna ex delicto defuncti Hæres teneri non debet*, and again, *In Restitutionem non in Pœnam Hæres succedit*.

By the Statute of *Articuli super Chartas*, if If an excessive the Sheriff make an excessive Distress contrary to Distress be the Intention of that Statute, the Party shall have taken, an At- an Attachment against him, or he may sue forth tachment lies. a Writ to inhabit the Sheriff that he do not distrain contrary to the Form of the Statute. *F. N. B.* 174.

Debt for Rent.

THE Executors and Administrators of Tenants in 32 *H. 8. c.* 37. Fee-Simple, Fee-Tail, or for Term of Life, of Where Execu- Rent-Services, Rent-Charges, Rent-Seck, and Fee-Farms, tors shall have shall have an Action of Debt for all Arrearages of the Debt for Ar- said Rents or Fee-Farms which were due unto their Testa- rears of Rent tors against the Tenants that ought to have paid the due to their same in the Life of their Testator, or against the Ex- Testators. cutors or Administrators of the said Tenants; and it shall also be lawful for the Executors and Administrators of such Persons to whom such Rent or Fee-Farm shall be due, to distrain for the Arrearages of the same on the Lands, Tenements, and Hereditaments charg'd with the Payment of such Rents or Fee-Farms so long as the said Lands, &c. remain in the Seisin or Possession of the said Tenants so in Arrear, or of any other Person claiming only from the said Tenant by Purchase, Gift, or Descent. *Stat.* 32 *H. 8. cap.* 37.

And

Husband may distrain for Arrears of Rent due in the Wife's Life-time. And if any Man shall have in the Right of his Wife any Estate in Fee-Simple, Fee-Tail, or for Term of Life, in any Rents or Fee-Farms, and the same shall be behind or unpaid in the Wife's Life, the Husband after her Death, his Executors and Administrators, shall have an Action for the said Arrears against the Tenant of the Demean, his Executors or Administrators; and the Husband may also distrain for the said Arrears as if his Wife had been living. *Ibid.*

One may have Debt for Arrears of Rent after the Person for whose Life it was granted is dead. And if any Person shall have any Rents or Fee-Farms for Term of Life or Lives which shall be due and unpaid in the Life of such Person or Persons for whose Life or Lives the Estate of the said Rent or Fee-Farm did depend, and such Persons do die, then he to whom the said Rent or Fee-Farm was due, his Executors and Administrators, shall have an Action of Debt against the Tenant in Demean, his Executors and Administrators, and also distrain for the same Arrears upon the Lands out of which the same were issuing. *Ibid.*

8 Ann. c. 17. Any Person having Rent in Arrear upon any Lease for Life or Lives may bring an Action of Debt for such Arrears of Rent as they might have done in case such Rent was due and reserved upon a Lease for Years.

Distress for Rent may be made within six Months after the Lease expir'd. And it shall be lawful for any Person having Rent in Arrear or due upon any Lease for Life or Lives, or for Years, or at Will, ended or determin'd, to distrain for such Arrears after the Determination of the said respective Leases, provided such Distress be made within six Calendar Months after the Determination of such Leases, and during the Continuance of the Landlord's Title or Interest, and during the Possession of the Tenant from whom such Arrears became Due. *Stat. 8 Ann. cap. 17.*

READINGS.

Before the Statute of 32 H. 8. cap. 37. the Heirs, Executors, or Administrators, of a Man seiz'd of a Rent-Service, Rent-Charge, Rent-Seck, or Fee-Farm, in Fee Simple or Fee-Tail, had no Remedy for the Arrearages incurr'd in the Life of the Owner of such Rents. 1 *Inst.* 162.

By Executors or Administrators of Tenant for Life in the Preamble of this Statute is to be intended *Tenant per auter Vie* so long as *Cestuy que Vie* liveth. *Ibid.*

If a Man make a Lease for Life or Lives, or a Gift in Tail, reserving a Rent, this is a Rent-Service within this Statute. *Ibid.*

The Distress is the more plain and certain Remedy than the Action of Debt, for the Action of Debt must be brought against them that took the Profits, when the Rent came behind or against their Executors or Administrators; but the Distress may be taken upon the Land, be it either in the Tenants own Hands, or in the Hands of any other that claims by or from him (that is, by Interpretation, under him) by Purchase, Gift or Descent, and these Words, claiming only by and from him are to be understood, claiming only from or under him by Purchase, Gift, or Descent, and not paramount or above him, as the Lord by Escheat claimeth not under the Tenant by Purchase, Gift, or Descent, but by reason of his Seignior, which is a Title paramount. *Ibid.*

Distress the more certain Remedy than the Action of Debt.

If there be Lord and Tenant, and the Rent is behind, and the Lord grant away his Seignior, and dieth, the Executors shall have no Remedy for these Arrearages, because the Grantor himself had no Remedy for them when he dy'd in respect of his Grant; and the Statute is (in like manner as the Testator might or ought to have done) & *sic de similibus*; for the Act giveth no Remedy when the Testator hath dispens'd with the Arrearages, or had no Remedy when he dyed. *Ibid.*

Executor has no Remedy, where the Grantor himself had none.

If the Tenant make a Lease for Life, the Remainder for Life, the Remainder in Fee, the Tenant for Life pays not the Rent due to the Lord; the Lord dyeth, the Tenant for Life dyeth, the Executors cannot distrain upon him in Remainder, because he claims not by or from the Tenant for Life: And so it is of a Reversion, for the Cause aforesaid. But if a Man grant a Rent-charge to *A* for the Life of *B*, and letteth the Lands to *C* for Life, the Remainder to *D* in Fee, the Rent is behind by divers Years; *B* dyeth, and after *C* dyeth, *A* may distrein *D* in Remainder for all the Arrearages by the latter Branch

Branch of the Statute of 32 H. 8. and this diversity riseth upon the several Pennings of the former Branch, and of this latter, which is so expounded and adjudged in *Edridge's Case*; and the latter Clause giveth the lesser Estate the greater Remedy. *Ibid.*

For the Arrearages of a *nomine pana*, and for relief, or for *Aid pur faire fite chivaler, or pur file marier*, this Statute giveth no Remedy for; for the Arrearages of the *nomine pana* the Grantee himself may have an Action of Debt, and consequently his Executors or Administrators; and yet the *nomine pana*, as an Incident to the Rent, shall descend to the Heir; for Relief, the Lord cannot have an Action of Debt, but distrein; but his Executors by the Common-Law shall have an Action of Debt, for it is no Rent, but a casual Improvement of Services for the said Aids. *Ibid.*

What sort of Arrears are within the Statute.

Note, That all manner of Arrearages of Rents issuing out of a Freehold as Inheritance, whether they be in Money, or Corn, or Cattel, Fowl, Pepper, Comin, Victual, Spurs, Gloves, or any other Profit to be delivered or yielded, or whether they be Annual, or every two, or three, or four Years, or the like, are within this Statute; but Work-days, or any corporal Service, or the like, are not within the Statute. *Ibid.*

It gives the Husband Remedy for the Arrears incurred before Marriage.

A Feme Sole is seisd of a Rent in Fee, &c. which is behind and unpaid, she taketh Husband; the Rent is behind again, the Wife dyeth, the Husband by the Common-Law should not have the Arrearages grown due before the Marriage; but for the Arreages become due during the Coverture, the Husband might have an Action of Debt by the Common-Law: But now this Statute by a particular Clause giveth the Husband the Arrearages due before Marriage, and the said double Remedy for the same, and that he may distrein for the Arrearages grown due during the Coverture; so it giveth him that which he could not have before, and further Remedy for that which the Common-Law gave him, and so it hath been adjudg'd. *Ibid.*

The

The Bishop of *Normich* had the First-Fruits of all the Clergy within the Diocese at every Avoydance the Church became void, and another Parson became Incumbent, who paid the Bishop parcel of his first Fruits, according to the Taxation of the Church, and for the Rest he had a Day given unto him to pay it; the Bishop dyed, the Residue was not paid, whereupon his Executors brought an Action of Debt, and it is adjudg'd, that no Action doth lye, because it is a mere Spiritual Thing, and no Lay-contract, and therefore the Court hath no Jurisdiction to hold Plea of it. *Ibid.*

He that is Privy in Estate, shall maintain an Action of Debt. 2 *Danv.* 483.

If a Man leases for Years, rendring Rent, and after grants over the Reversion, and the Tenant attorns, the Grantee shall have an Action of Debt for the Rent incurr'd after. 9 *H. 6.* 16. 3 *Cok.* 22.

So if he in Reversion dies, his Heirs shall have an Action of Debt for the Rent incurr'd after. 14 *H. 6.* 26. 19 *H. 6.* 16. *Bro. Debt,* 123.

If Lessee for Years grants over his Term, an Action of Debt lies against the Grantee for Rent incurr'd after. 9 *H. 6.* 52. 10 *H. 6.* 11.

If Lessee for Life rendring Rent, grants over his Estate, and after dies, Debt lies against the Grantee for Rent incurr'd after the Grant. 10 *H. 6.* 11.

If Feme-Lessee for Life, takes Husband and dies, debt lies against the Husband for Rent issuing out of the Land incurr'd during the Coverture, for he took the Profits out of which the Rent issued. 10 *H. 6.* 11. *Curia.* 26 *Ed.* 3. 64. adjudg'd.

It lies against him or his Executors for the Arrears of a Rent Charge incurr'd, during such time as he took the Profits. 4 *Co.* 49. *b.*

If Lessee for Years assigns all his Interest to another, yet the Lessor may have Debt against the Lessee for the Arrears incurr'd after Assignment, for the Privy of Contract remains, and the Lessee

Where the Lessor shall have his Remedy against the Lessee af-

ter Assign-
ment.

see by his own Act shall not prevent the Remedy of the Lessor against him upon his Contract. *Hill 29. Eliz. Walker's Case. 3 Co. 22. adjudg'd per totam Curiam.*

But if he once accepts the Rent from the Assignee, he shall not after charge the Lessee for Rent due after the Assignment. *3 Co. 24. b. Marrow & Turpin.* For in the Acceptance of the Rent, notice of the Assignment is imply'd. *March & Brace. Cro. Jac. 334. adjudg'd.* But tho' he refuses to accept the Assignee as his Tenant, yet he may after charge him in an Action for the Rent, if he pleases. *Deverux Barlow. 2 Saund. 181.*

If after the Assignment of the Lessee, the Lessor grants over his Reversion to another; the Grantee shall not have Debt against the Lessee, for the Privy of Contract holds only between the Lessor and Lessee. *Walker's Case, Hill, 29 Eliz. 3. Co. 22. b. per Curiam.*

If a Prebend leases for Years, rendring Rent, and this is confirm'd by Dean and Chapter, and the Lessee dies, and his Executor assigns over the Term, and after the Prebend resigns, and a new Prebend is made, he shall not have Debt against the Executor of the first Lessee for Rent due after the Assignment, for the Successor was no Party to the Contract, but Privy in Law only; and by the Assignment of the Term, the Cause of the Charge is remov'd. *Pasch 39. Eliz. between Overton and Sydal. Cro. Eliz. 555. adjudg'd upon Demurrer.*

If *A* leases 3 Acres to *B*, rendring Rent, and *B* assigns all his Estate in one Acre; and after *A* grants the Reversion of the 3 Acres to *C*, he may have Debt against *B* for the whole Rent; for the entire Estate remaining in Part, the entire Privy and Action for the whole remains against the first Lessee. *Mich. 40 Eliz. between Broom and Hore. Cro. Eliz. 633.*

Debt lies a-
gainst the
Assignee of a
Moiety.

If Lessee for Years assigns his whole Term in the Moiety of the Land, the Lessor may have an Action against the Assignee for the Moiety of the Rent;

Rent; for the Assignee having the entire Estate in the Moiety of the Land, he hath a sufficient Privy of Estate to be charged by the Lessor, if he pleases, with the Moiety of the Rent. *Mich. 30. Car. 2. between Gamon and Vernon. 2 Lev. 231. adjudg'd.*

Where a Man way have an Annuity, he shall not have an Action of Debt. *8 H. 6. 6. b. agreed.*

If a Man grants to another 10 l. every Year, he shall be resident within such a Parish, the Grantee cannot have Debt for it, but an Annuity; for this is Annual at his Will. *4 H. 6. 91. b. 8 H. 6. 7.*

If a Man makes a Feoffment in Fee, reserving a Rent for ten Years to him and his Heirs, Debt lies for this Rent, for it is but a Chattel. *2 Danv. 489.*

So if a Man leases for Life, rendring a Rent for one Year, Debt lies for it, for this is but a Chattel. *Ibid.*

So if a Man leases for ten Years, rendring 10 l. Rent to him and his Heirs, upon Condition to have a Fee, and if he perform the Condition, reserving 20 l. per Ann. though the Fee passes presently, yet it seems, Debt lies for the Rent before the Condition perform'd; for before that it is but a Chattel. *7 E. 3. det. 147. adjudg'd.*

If an Annuity be granted, and a *Nomine pena* every Day that it is Arrear; if the *Nomine pena* be forfeited, Debt lies for it. *20 H. 6. 6. contra 8 H. 6. 6. b. dubitatus. 7 H. 6. 40. Danv. 489.*

If by Prescription the Burgeses of a Town ought every Year to elect a Man to collect the Rents of the Lord, and that he ought to pay to the Lord 22 s. for the Profit of the Market, an Action of Debt lies for every 22 s. by the Lord; for that, though this be an Inheritance, yet it is a particular Duty by every Collector. *11 H. 6. 14. b. It is that the Executor of the Lord shall have an Action.*

DEBT for Rent.

If a Rent of the very Tenant be Arrear, and after the Lord aliens the Seigniorie, yet he shall not have Debt for the Arrearages, because the Freehold of the Rent continues. 19 H. 6. 42. b.

Nor if he dye, shall his Executor by 32 H. 8. cap. 37. for that Act gives no Remedy where the Testator himself hath dispens'd with the Arrears, or had no Remedy when he died. Co. Lit. 162. b. So if a Man hath a Rent-charge in Fee, and it is in Arrear, and he grants over the Rent. March 103. Danv. 490.

If the Father grants a Rent-charge to the Son in Fee, and the Rent being Arrear, the Father dies, and the Land descends to the Son, by which the Rent is extinct, the Son may charge the Executors of the Father in an Action of Debt for the Arrearages incurr'd in the Life of the Father, for though no Action lies for them as for the Arrearages of a Rent, yet it lies for them as for the Arrearages of an Annuity; for though both the Annuity and Rent are determin'd, yet the original Election remains as to the Arrears. 4 Co. 49. a.

If a Woman had been endow'd of a Rent, or a Rent had been granted for Life, and the Tenant had attorn'd, and after Rent had been Arrear, and then the particular Estate in the Rent had determined by Death, the Executors of the Tenant in Dower, or of the Grantee for Life, should have had Debt by the Common Law, because by possibility the Testator might have had Debt, as if he had surrendred his Estate to the Reversioner he should have had Debt for the Arrears incurr'd before, and these particular Estates, with the Attornment of the Tenant, or when the Law supplies an Attornment, amount to a real Contract in Law; which Realty, when the Freehold is determin'd, resolves it self to the Personalty. 4 Co. 49. a. b. Kelw. 47. b. Danv. 491.

If a Man leases for Years, rendring Rent, and after devises the Rent to another, and dies, the Devisee may have an Action of Debt for the Rent, though it is become a Rent-Seek, because by the ori-

original Creation thereof, Debt lay. *Mich. 11 Jac. B. R. between Holland and Hunt per Houghton. Danv. 494.*

If a Man leases Lands for Years, reserving yearly 20 *l.* at four Quarters, Debt lies for one Quarter before the other are past, because it favours of the Realty, and is as several Contracts. *Co. Lit. 476.* Debt for Rent reserv'd Quarterly.

If a Man leases Lands for Years, reserving weekly during the Term nine Quarters of Wheat, an Action of Debt lies for any Weeks Quarters before, the others are incurr'd for this is a Rent. *Trin. Ja. B. R. between the Lord Denny and Parnell, adjudg'd. 2 Danv. 500.*

If the Lessor accepts an Obligation for Rent due upon a Lease for Years, this does not extinguish the Rent, because the Rent is higher, being real, for of this the Law does not lie. *11 H. 4. 79. b. 13 H. 4. 1. 20 H. 6. 45. b. Danv. 507.* Bond for Rent does not extinguish the Rent.

If Lessee for Years, rendring Rent, never enters into the Land, yet if the Lessor waives the Possession, an Action of Debt for the Rent lies upon the Contract. *D. 24 H. 8. 4. 3. 28 H. 8. 14. Danv. 508.*

And therefore in a Declaration in Debt for Rent against such Lessee, it need not be shew'd that he entred, for the Contract is the ground of the Action. *4 Leon. 18. Hetb. 54. 1 Vent. 41.* And the Occupation is not material otherwise of a Lease at Will. *Dyer. 14. a. Hetb. 54. 1 Ventr. 41. 108.*

If in Debt for Rent, the Plaintiff declares upon a Lease for Years, rendring 31 *s.* yearly at Lady-Day and Michaelmas by equal Portions, and demands 15 *s.* 6 *d.* for Rent behind for one Year, ending at Lady-Day last, the Declaration is naught; for the Demand of 15 *s.* 6 *d.* being for the Arrears of the Rent of the whole Year, it ought to have shew'd how he was satisfy'd the Residue. *Trin. 4 Car. between Baily and Offord: Cro. Car. 137. adjudg'd; and for this Cause, after a Demurrer to the Defendants Plea, the Writ was abated. 2 Danv. 508.*

Debtors.

50 E. 3. c. 6.

Grants of
Lands or
Goods to de-
fraud Credi-
tors, Execu-
tion may be
had against
them.

WHereas People inheriting Tenements, borrow Goods, Money, and Merchandize of divers People, and give their Tenements and Chattels to their Friends by collusion to have the Profits, and afterwards flee to the Franchise of *Westminster*, of *St. Martin le Grand*, *London*, or other priviledg'd Places, and there live high of other Mens Goods and the Profits of the said Tenements and Chattels, till they oblige their Creditors to take part of their Debts, and release the remnant: It is ordain'd, That if it be found, that such Gifts be so made by collusion, the Creditors shall have Execution of the said Tenements and Chattels as if no such Gift had been made. *Stat. 50. Ed. 3. cap. 6.*

2 R. 2. c. 3.

Execution
may be of
Lands and
Goods grant-
ed by collusi-
on to defraud
Creditors.

Where Debtors make feign'd Gifts and Feoffments of their Goods and Lands, and flee into Places of Holy Church priviledg'd, and there continue a long time, and take the Profit of their said Lands and Goods, if their Creditors bring Writs of Debt, and the Sheriff return, that he hath not taken them, because of their remaining in such priviledg'd Places, then another Writ shall be made out, commanding that Proclamation be made openly at the Gate of such priviledg'd Place five Weeks successively, that such Debtor be before the Justices at a certain Day, to answer the Plaintiff's demand; then if neither they or their Attorneys appear upon the Return of the last Writ, Judgment shall be given against them for their Default, and Execution shall be made of their Goods and Lands being out of the Place priviledg'd, as well those so given by collusion, as of any other after such Collusion or Fraud be duly found. *Stat. 2. R. 2. ap. 3.*

3 H. 7. c. 4.

Where oftentimes Deeds of Gift of Goods and Chattels have been made to defraud Creditors, and the Debtor goeth to Sanctuary or other priviledg'd Place, and liveth on the said Goods and Chattels. his Creditors being unpaid: It is ordain'd, That all Deeds of Gift of Goods and Chattels made in Trust to the Use of such Person be void and of none effect. *3 H. 7. cap. 4.*

13 Eliz. c. 5.

Grants to de-
fraud Credi-
tors, void.

For avoiding and abolishing feign'd covenous and fraudulent Feoffments, Grants, Conveyances, Bonds, Judgments and Executions devis'd and contriv'd of Malice, Fraud, Covin, or Collusion, to delay, hinder or defraud Creditors and others of their lawful Actions, Debts, Damages, Penalties, Forfeitures, Heriots, Mortuaries and Reliefs: It is enacted, That every such Grant, Bargain, and

and Conveyance of Lands, Tenements, Hereditaments, Goods or Chattels, or of any Lease, Rent, Common, or other Profit or Charge out of the same, by writing or otherwise, and every Bond, Judgment and Execution made for the Purpose aforesaid, shall be deem'd and taken (only against the Persons, their Heirs, Successors, Executors and Assigns, whose Actions, Debts, Damages, &c. might be disturb'd, hindred, delay'd, or defrauded) to be utterly void and of none effect. *Stat. 33 Eliz. cap. 5.* And every of the Parties to such feign'd, fraudulent Grants, Bargains, Conveyances, Bonds, Judgments, and Executions, being privy and knowing of the same, who shall wittingly and willingly put in ure, avow or defend the same, or any of them, as true, or made or done *bona fide*, upon good Consideration; or who shall alien or assign any Lands, Goods, Leases, or other Things before mentioned, to them convey'd as aforesaid, or any part thereof, shall forfeit one Years Value of the said Lands, or of the Leases, Rents, or other Profits issuing out of the same, and the whole Value of the said Goods and Chattels, and so much Money as is contain'd in such covenous Bond, one Moiety to the Crown, and the other to the Parties griev'd by such Conveyance, Grant, Bargain, Bond, Judgments, Executions, Leases, Rents, and Things aforesaid, to be recovered in any Court of Record, by Action of Debt, Bill, Plaint or Information, and the Defendant on Conviction shall suffer half a Year's Imprisonment without Bail or Mainprize. *Ibid.*

Provided that common Recoveries be of like Force and Effect as if this Act had not been made; nor shall it extend to any Conveyance or Assurance of Lands, Tenements or Hereditaments, Goods or Chattels made *bona fide* upon good Consideration. *Ibid.*

To continue to the End of the first Session of the next Parliament; and by the 29 *Eliz. 5.* made perpetual.

Every Citizen and Freeman of London, and every other Person inhabiting within the said City or Liberties, being a Tradesman, Victualler, or Labouring Man, who shall have any Debt owing to him under 40 s. by any Citizen, Victualler, Tradesman, or Labouring Man, inhabiting the said City or Liberties, may cause such Debtor to be warn'd by the Officer of the Court of Request there, by Writing left at such Debtor's dwelling House, or by other reasonable Notice, to appear before the Commissioners of the said Court of Request, who are empower'd to make such Orders between the Parties, Debtor and Creditor, as to such Debts as do not amount to 40 s. as shall stand with Equity and good Conscience; and such Orders shall

3 *Jac. c. 15.*
Court of
Conscience
establish'd in
London for re-
covery of
Debts under
40 s.

be register'd as formerly, and obey'd by the Parties, to whom and their Witnesses the said Commissioners are empower'd to administer an Oath. *Stat. 3 Jac. c. 15.*

And if any Action shall be brought for the Recovery of any Debt under 40 s. in any other Court, and the Defendant shall prove that at the time of the Action brought he was inhabiting and resiant in *London* or the Liberties thereof, the Plaintiff shall have no Costs, but shall pay Costs to the Defendant. *Ibid.*

And if any Creditor or Debtor, after Notice given, as aforesaid, shall, without just Cause, refuse to appear before the said Commissioners, or shall not perform their Order concerning such Debts as aforesaid, the said Commissioners may commit them to one of the Counters until they shall perform such Order. *Ibid.*

Provided that this Act shall not extend to any Debt for Rent, or any other real Contracts, nor to any Debt arising by reason of any Cause concerning a Testament, or Matrimony, or any thing properly belonging to the Ecclesiastical Court, altho' the same be under 40 s. *Ibid.*

4 & 5 W. &
M. cap. 16.

If one mortgages his Lands, and does not give Notice of the Judgments, &c. it is liable to, he shall not redeem.

If any Person shall borrow Money, or for other valuable Consideration acknowledge, or suffer to be enter'd against him one or more Judgments, Statutes or Recognizances; and if he shall afterwards take up or borrow any other Sum of another Person, or for other valuable Consideration, become indebted to such other Person, and for securing the Repayment thereof, shall mortgage his Lands or Tenements, or any Part thereof to the said Second or other Lender, or to any other Person in Trust, or to the Use of such second Lender or Creditor, and shall not give Notice to the said Mortgagee of the said Judgment, Statute, or Recognizance, in writing under his Hand before the Execution of such Mortgage, unless such Mortgager or his Heirs, upon Notice given him by the Mortgagee, his Heirs, Executors, or Assigns, in writing under their Hands and Seals of any such Judgment, &c. shall within six Months pay off and discharge the same, and cause the same to be vacated by Record, the said Mortgager, his Heirs, Executors, or Administrators, shall be excluded any Benefit of Redemption of such Lands; and the Mortgagee, his Heirs, Executors, &c. shall hold the same for such Estate and Term as was granted against the Mortgager; and all Persons claiming under him, as if the same had been absolutely purchased. And if any Person, who shall once mortgage any Lands or Tenements, second time, shall again mortgage the same Lands, or any part thereof, to another Person, the former Mortgage being in force, give Notice of and not discharged, and shall not discover to the second the first.

Mort.

Mortgagee the former Mortgage in writing under his Hand, then the said Mortgager, his Heirs, Executors, &c. shall have no Relief or Equity of Redemption, but such second or other Mortgagee, his Heirs, &c. may hold and enjoy such Lands and Tenements for such Estate or Term as was granted against the said Mortgager, his Heirs, &c. as if the same had been absolutely purchased. Provided that the late or under Mortgagee or Mortgagees, their Heirs, Executors, &c. shall have Power to redeem any former Mortgage or Mortgages upon payment of the principal Debt, Interest and Costs to the prior Mortgagee or Mortgagees, their Heirs, Executors, &c. Provided that this Act shall not extend to bar the Widow of any Mortgager of her Dower, who did not legally join with her Husband in such Mortgage, or otherwise lawfully bar her self. Stat. 4 & 5. W. & M. c. 16.

After the first of May, 1697. All Persons either upon 8 & 9 W. 3. Contempt or mesn Process, or in Execution, who shall be committed to the Custody of the Marshal of the King's Bench or Warden of the Fleet, shall be actually detain'd suffered to go within the said Prisons, or the respective Rules of the same, until they shall be discharg'd by due Course of Law. And if the said Marshal or Warden, or the Keeper of any other Prison, shall suffer such Prisoner to go, or be at large out of the Rules of their respective Prisons (except by Virtue of a Writ of *Habeas Corpus*, or Rule of Court, which Rule shall not be granted but by Motion or Petition read in open Court) every such going or being out of the said Rules, shall be adjudg'd an Escape. Stat. 8 & 9 W. 3. c. 27.

And every Person obtaining Judgment in an Action of Escape against the said Marshal or Warden, or their respective Deputies, shall have not only the several Remedies by Law already allow'd for obtaining Satisfaction thereon, but the Judges of the respective Courts where such Judgment shall be obtain'd (upon Oath made by the Plaintiff that the same was obtain'd without Fraud, and that the Debt of the Prisoner escaping was a real Debt, and unsatisfy'd) shall upon Motion in open Court, satisfy the Fees and Profits of the Office of Marshal or Warden, or so much as such Court shall think fit with respect to the Debt due from such Prisoner escaping, and apply the same in the first place towards the Satisfaction of the Debt due from the Prisoner who escap'd, together with all Costs and Damages recover'd in such Action of Escape. *Ibid.*

And if any Writ of Error for Delay only shall be brought by such Marshal or Warden, or their respective Deputies, to give special

Bail on bringing a Writ of Error. to reverse a Judgment given in such Action of Escape, he shall put in special Bail, or no Execution shall be stay'd, or Sequestration of the Profits delay'd.

Marshal, &c. If any Marshal or Warden, or their respective Deputies, or the Keeper of any other Prison, shall take any Money, Gratuity, Reward, or Security, to procure, connive at, or permit any such Escape, he shall forfeit 500 l. and his Office, and be disabled to hold any such Office. *Ibid.*

Security may be given for remaining within the Rules.

Provided this Act shall not extend to make void such Securities as Prisoners shall give for their Lodgings within the Rules of the said Prisons, so that such Security be not taken for the Enlargement of a Prisoner out of or beyond the Rules. *Ibid.*

And no Retaking on fresh Pursuit shall be given in Evidence on the Trial of an Issue in an Action of Escape against the said Marshal, Warden, or their Deputies, or other Keepers of Prisons, unless the same be specially pleaded. Nor shall any special Plea be receiv'd or allow'd unless Oath be first made in Writing by such Defendant, and fil'd in the proper Office, that the Prisoner escap'd without their Consent or Privity. And if such Affidavit shall appear to be false, such Marshal, Warden, or other Keeper, shall forfeit 500 l. *Ibid.*

Prisoner escaping may be taken by a fresh Writ.

And if any Prisoner committed in Execution to either or any of the said Prisons shall escape by any Means whatever, the Creditor at whose Suit he was charg'd in Execution may retake such Prisoner by a new *Capias* or *Ca sa*, or sue forth any other kind of Execution on the Judgment as if such Prisoner had never been taken in Execution. *Ibid.*

Refusing to shew a Prisoner adjudg'd an Escape.

If the said Marshal, Wardens, or their Deputies, or the Keeper of any other Prison, shall after one Day's Notice in Writing for that purpose refuse to shew a Prisoner committed to the Creditor, or his Attorney, such Refusal shall be adjudg'd an Escape. *Ibid.*

Marshal, &c. And if any Person desiring to charge a Person with any Action or Execution shall desire to be inform'd by the said Marshal, Warden, their Deputies, or the Keeper of any other Prison, whether such a Person be a Prisoner, the said Marshal, &c. shall give a true Note in Writing to such Person, or his Attorney, upon Demand thereof at his Office, or he shall forfeit 50 l. And such Note in Writing specifying that such Person is an actual Prisoner in his Custody shall be accepted as sufficient Evidence that such Person was at that time in actual Custody. *Ibid.*

Conveyances of the Prisons of the King's-

After the 24th of June, 1697. all Conveyances, Grants, and Mortgages, of the Inheritance of the said Prisons of the King's-Bench and Fleet, and of the Prison, Houses, Lands,

Lands, Tenements, and Hereditaments, thereto belong-Bench and
ing, and all Leases thereof, and the respective Titles of Fleet to be en-
the said Marshal and Warden, or of them in whom the roll'd.

Inheritance of the said Prisons and Premises now are,
and all Trusts, and Declarations of Trusts, thereto re-
lating, shall be enroll'd, (*viz.*) that of the Marshal in the
King's-Bench, and that of the Warden in the Court of
Common Pleas, within six Months after executing such
Conveyances, Grants, Leases, or Deeds of Trusts, as
aforesaid, or they shall be void.

And the said Offices of Martial of the King's-Bench
Prison and Warden of the Fleet, and each of them, shall
be executed by the several Persons to whom the Inheri-
tance of the said Prison, Houses, Lands, and Premises,
respectively belong, in his or their proper Person or Per-
sons, or by his or their sufficient Deputies, (for which
Deputies, and for all Forfeitures, Escapes, and Misdemean-
ors, by such Deputies permitted, suffer'd, or committed;
the said Person or Persons in whom the aforesaid Inheri-
tances respectively are, shall be answerable, and the Pro-
fits and Inheritances of the said several Offices be se-
quester'd, seiz'd, or extended, to make Satisfaction for
such Forfeitures, Escapes, and Misdemeanors.) *Ibid.*

And it shall be lawful for any Person having Cause of Judgment to
Action against the Warden of the Fleet upon Bill fil'd be sign'd
against him in the Common Pleas or Exchequer, and a against the
Rule given to plead thereto to be out in eight Days after Warden in
filing such Bill, to sign Judgment against the said Warden, Default of a
unless he plead within three Days after such Rule is out. Plea.
Ibid.

And for the more easy and quick obtaining Judgment Declarations
against a Prisoner in the Fleet, it shall be lawful for any to be deliver'd
Person having Cause of Action against such Prisoner, after against Pri-
filing or entring a Declaration with the proper Officer, to soners in the
deliver a Copy thereof to such Defendant in any personal Fleet.
Action, or to the Turnkey or Porter of the said Fleet Pri-
son, and after a Rule given to plead, to be out in eight
Days at most after Delivery of such Copy, and Affidavit And Judg-
made thereof before one of the Judges of the Common ment sign'd
Pleas or Exchequer, to sign Judgment against such Defen-for want of a
dant as if he had been actually charg'd at the Bar of the Plea.
Common Pleas or Exchequer with such Action. *Ibid.*

No Prisoner shall be compellable to pay Rent for any Chamber
Chamber in any Prison for any longer time than he shall Rent 2 s. 6 d.
be in Possession thereof, nor to pay above two Shillings per Week.
and six Pence a Week for such Chamber: And the Mar-
tial, Warden, or other Keeper, demanding or taking
more shall forfeit 20 l. *Ibid.*

And

Persons
having Debts
owing from
Persons shel-
tering them-
selves in *White-
Fryars* and
other pretend-
ed priviledg'd
Places.

May require
the Sheriff to
take the *Posse*,
&c. to appre-
hend them.
And if Sheriff
refuse, to for-
feit 100 l.

Pain of resist-
ing Officer
50 l. Imprisonment and
Pillory.

Pain of Res-
cous 500 l.

And in De-
fault of Pay-
ment to be
transported.

Person har-
bouring a
Rescuer to be
transported.

And for preventing the many scandalous Practices used in many pretended priviledg'd Places to defraud Persons of their Debts, it is enacted, that any Person having any Debt owing him from any Person residing in *White-Fryars*, the *Savoy*, *Salisbury-Court*, *Ram-Alley*, *Mitre-Court*, *Fuller's-Rents*, *Baldwin's-Gardens*, *Mountague-Close*, or the *Minorities*, *Mint*, *Clink*, or *Dead-Man's-Place*, upon legal Process taken out against such Person, to require the Sheriffs of *London* and *Middlesex*, Head-Bailiff of the Dutchy of *Lancaster*, or High-Sheriff of *Surrey*, or Bailiff of *Southwark*, as the Case shall require, or their respective Deputies or Officers, to take, and they are hereby enabled to take, the *Posse Comitatus*, and such other Power as shall be requisite, and enter such pretended priviledg'd Place and arrest; and (in case of Refusal to open) to break open any Doors to arrest such Persons upon mesn Process, Extent, or Execution, or to seize the Goods of such Person upon Execution or Extent. And if such Sheriff, Bailiff, or their Deputies or Officers, shall neglect with such Force to use their best Endeavours for executing such Process, he shall forfeit to the Plaintiff 100 l. to be recover'd in any of the Courts at *Westminster*. *Ibid*.

And if in the executing such Process, Execution, or Extent, any Person shall resist such Officers, or any who shall be aiding and assisting to them, he shall forfeit 50 l. and be committed to the common Goal where the Offence was, without Bail, till the next Assizes. Sessions of Oyer and Terminer, or Goal-Delivery, and being convicted, shall suffer Imprisonment, and be set in the Pillory, as the Court shall think fit. And if any Rescous shall be made within the Limits of the aforesaid priviledg'd Places, the Person making such Rescous, or assisting therein, shall forfeit to the Plaintiff in such Action 500 l. to be recover'd in any of the Courts at *Westminster*. And if after Recovery had, such Person shall neglect to pay the 500 l. to the Plaintiff, with full Costs, within one Month after Judgment sign'd, upon producing a Copy of the Judgment, and Oath made that the Money recover'd is not paid, he shall by Order of the Court where he was convicted be transported by the Sheriff to the Plantations, there to remain seven Years. And if the Person transported shall return again within seven Years, he shall be adjudg'd guilty of Felony without Benefit of Clergy. *Ibid*.

And any Person inhabiting in the said pretended priviledg'd Places who shall receive, conceal, or harbour any Person concern'd in a Rescous, having notice thereof, shall by Order of the Court where he is convicted be transported by the Sheriff to the Plantations, there to remain for seven

Seven Years, unless he pay the Plaintiff the full Debt or Duty for which such Action was brought, with full Costs. And if he shall return into this Kingdom within seven Years, he shall be adjudg'd guilty of Felony without Benefit of Clergy. *Ibid.*

The Penalties in this Act, not before dispos'd of, shall Forfeitures be-
go, one half to the King, and the other to him that will tween the
sue for the same, as aforesaid. *Ibid.* King and the
Prosecutor.

This to be taken for a publick Act, and to be taken be-
neficially, for preventing the Mischiefs provided against;
and if any Person shall be sued for what he shall do in
pursuance of this Act, he may plead the general Issue,
and give this Act and the special Matter in Evidence; and
if the Plaintiff be nonsuit, or a Verdict be given for the
Defendant, the Defendant shall have double Costs. *Ibid.*

If any Persons committed, render'd, or charg'd in Cu- 1 Ann. Stat. 2.
stody of the Marshal of the Queen's-Bench, or to or in c. 6.
the Prison of the Fleet, either in Execution or upon mean If a Prisoner
Process, or upon any Contempt, and such Person, before in the King's-
he or she shall have made Payment or Satisfaction to the Bench or Fleet
Plaintiff or Creditor, or shall have clear'd himself of such go at large,
Contempt, shall make an Escape from the the Custody of
the Marshal, or from the Prison of the Queen's-Bench or
Fleet, or shall go at large, it shall be lawful, upon Oath
thereof in Writing before one of the Judges of that
Court where such Action was enter'd, or Judgment and
Execution obtain'd, or where the Party was so committed
or charg'd as aforesaid, and such Judge is hereby requir'd Judge to grant
to grant one or more Warrants under his Hand and Seal, an Escape
reciting the Action, Execution, or Contempt, with which Warrant,
such Person stood charg'd, or was committed, at the Suit
of any Person on whose Behalf such Warrant shall be de-
manded, directed to all Sheriffs, Mayors, Bailiffs, Con-
stables, Headboroughs, and Tythingmen, commanding
them in their respective Counties, Cities, Towns, and Pre-
cincts, to seize and retake such Persons so escap'd, and
convey and commit them to the common Goal of the And he shall
County where retaken, there to remain, without Bail or be committed
Removal, until full Payment made to their respective to the County
Plaintiffs or Creditors, or until the Judgment on which Goal where
such Execution was sued out be discharg'd, or until the taken without
Contempt be clear'd, (except such Person be charg'd with Bail or Re-
Treason or Felony, or any other Crime on Behalf of the moval,
Crown;) and if he be removed to any other Prison for Except for
such Crime, he shall be charg'd in Custody, with all the criminal Of-
fences with which he was charg'd in the Goal from fences.
whence he was remov'd. And every Mayor, and other
Officer, after Delivery of such retaken Prisoner, shall take
a Re-

a Receipt from the Sheriff for such Prisoner; and the Sheriff after the Execution of such Warrant shall forthwith make a Return thereof to the Court where the Action is depending, or the Judgment, Order, or Decree, was obtain'd. *Stat. 1 Ann. Stat. 2. c. 6.*

And the Sheriff there chargeable if he escapes again.

And his Bail may charge him in Custody there by a Writ to the Sheriff.

1 Ann. Stat. 2. c. 6.

And shall be deem'd a sufficient Render.

Sheriff to return such Writ, &c. on pain of 50 l.

Treble Costs for Persons acting in pur-

And if any Person so retaken by such Warrant shall make an Escape out of the Goal to which he shall be committed as aforesaid, the Sheriffs in whose Custody he was shall be liable for such Escape as in the Case of any other Escape. *Ibid.*

And it shall be lawful for any Person that shall be Bail in any Action in the Courts at *Westminster* for any such Person so retaken and convey'd to Goal as aforesaid, to prosecute out of the Court where he shall be Bail a Writ directed to the Sheriff of the County where such Prisoner shall be committed, commanding him to detain such Prisoner in Custody in Discharge of his Bail; which Writ, with an Account whether he hath the said Prisoner in his Custody, shall be return'd at a Day therein mention'd, and the Delivery of such Writ to the Sheriff, or his Deputy, shall be deem'd an effectual Render of such Prisoner in Discharge of the said Bail. And in case such Sheriff, his Deputy, or other inferior Officer, shall afterwards suffer such Prisoner to escape, he and they shall be liable to such Actions as the Martial of the Queen's-Bench or Warden of the Fleet are liable to for permitting any Person to escape who was committed upon Render in Discharge of his Bail. *Ibid.*

And every such Sheriff, upon Request of such Person being Bail as aforesaid, who shall deliver such Writ for the detaining such Prisoner as aforesaid, shall for the usual Fees make a Return, and certify under his Hand the Receipt of such Writ, and the Time when, and whether the said Person so retaken was then in his Custody; and for every Default shall forfeit 50 l. to be recover'd in the Courts at *Westminster* by Action of Debt, Bill, Plaint, or Information, wherein no Essoign, &c. shall be allow'd: And upon producing of such Return, the said Court shall cause a *Reddidit se* to be entred which shall be as effectual as if the said Bail had then actually rendred the Person of the Defendant. *Ibid.*

This Act to be deem'd a general Law, and every Clause therein shall be construed most beneficially, for preventing the Abuses, Escapes, and other Inconveniencies herein provided against. *Ibid.*

And if any Person shall be sued for what he shall do in pursuance of this Act, he may plead the general Issue, and give in Evidence the special Matter; and if the Plaintiff

be nonsuit, or discontinue, or a Verdict be given for the suance of this Defendant, or Judgment for him upon a Demurrer, the Act. Defendant shall have treble Costs. *Ibid.*

If any Person shall after the 10th of October, 1723. 9 Geo. c. within the Place commonly call'd *Suffolk-Place*, or the Persons opposite the pretended Limits thereof, wilfully obstruct or oppose any Persons serving, or attempting to serve or execute, any Writ or any Rule or Order of any Court of Law or Equity, or other legal Process whatsoever, or any Felons and to Escape Warrant, or the Warrant of any Justice of Peace, be transported or shall assault or abuse any Person serving such Writ, or for having so done, whereby any such Person shall receive Damage or bodily Hurt, every such Offender shall be adjudg'd guilty of Felony, and be transported to the *British Plantations in America*, by such Ways and Means, and for such Time, and under such Pains, as Felons in other Cases are by Law to be transported. *Stat. 9 Geor. cap.*

And upon any Complaint made to any three or more Justices of the Peace of the County of *Surrey* by any Person who shall have a Debt or Sum of Money owing from any Person who shall reside in the *Mint*, or the pretended Limits thereof, such Creditor having any legal Process taken out for Recovery of the same, and making Oath before such Justices that a Debt or Debts exceeding 50 *l.* at least is due to him from such Person, and that such Creditor verily believes that such Person doth then reside within such Place as aforesaid, the said Justices, or any three or more of them, are impower'd, if they shall find it requisite, to issue their Warrant or Order to the Sheriff of *Surrey*, or the Bailiff of the Liberty of *Southwark*, requiring him or them, or their respective Deputies or Officers, to raise the *Posse*, or such other Force as they shall think fit, and to enter the said pretended privileged Place of the *Mint*, or the pretended Limits thereof, and to arrest; and in case of Resistance or Refusal, to brake open any Doors to arrest such Person upon any mean Process, or other Process, Extent, or Execution, and to seize the Goods of such Person upon any Execution or Extent. And if such Sheriff or Chief-Bailiff, their respective Deputies or Officers, shall neglect or refuse upon such Warrant or Order to use their best Endeavours for the executing such Process, Execution, or Extent, he or they so neglecting or refusing, shall forfeit to the Plaintiff 200 *l.* to be recover'd by Action of Debt, Bill, Plaint, or Information, in which no Essoign, &c. shall be allow'd. And if any Person shall resist or oppose any Officer, or any Person who shall be aiding or assisting to such Officer,

200 *l.*
cer,

Persons opposing the executing Process, or harbouring or abetting any that do, Felons, and to be transported.

9 *Geo. c.*

Persons in Vizards or Disguises opposing the Execution of Process guilty of Felony without Clergy.

40 *l.* Reward for apprehending an Offender.

cer, in the Execution of any Writ, or any Escape Warrant, or any Warrant of any Justice of Peace, or of any legal Process, Execution, or Extent, within the said Place call'd the *Mint*, or the pretended Limits thereof, or shall make a Rescous of any Prisoner taken upon such Writ, Process, Execution, or Extent, within the Limits aforesaid, or shall there knowingly harbour or conceal any Prisoner so taken, or any Person who rescued any such Prisoner, or shall be contriving, or knowingly and willingly abetting or assisting in resisting such Officer, or in rescuing any such Prisoner taken as aforesaid, or shall exercise any unlawful Jurisdiction, or make or execute, or join in the making or executing any pretended Rule or Ordinance for supporting any pretended Privilege within the said Place call'd the *Mint*, or the pretended Limits thereof, contrary to Law, or for opposing or hindring the due Execution of legal Process, or any lawful Warrant, Rule, Order, or Decree of any Court of Law or Equity; every such Offender, being convicted upon an Indictment or Information brought or fil'd within six Months after the Offence, shall be adjudg'd guilty of Felony, and be transported as aforesaid. *Ibid.*

And if any Person wearing any Vizard Mask, or disguis'd Habit, or having his Face or Body disguis'd, shall within the *Mint*, or pretended Limits thereof, join in, or aid or abet any Riot or Tumult there, or shall in any Vizard, or other Disguise whatever, knowingly and willingly oppose the Execution of any legal Process, Order, or Warrant, or assault and abuse any Person serving, or for having serv'd, the same; every such Offender shall be adjudg'd guilty of Felony without Benefit of Clergy: And all Persons aiding and abetting, or knowingly harbouring or concealing such disguis'd Person, shall be adjudg'd guilty of Felony, and transported to the Plantations as aforesaid. *Ibid.*

And every Person who shall apprehend a Person guilty of any of the Offences aforesaid, and prosecute him to Conviction, shall receive 40 *l.* as a Reward, to be paid by the Sheriff of *Surrey gratis* within one Month after Conviction, and Demand thereof made, by tendring a Certificate under the Hand of the Judge before whom such Offender was convicted, certifying the Conviction, and that he was taken by the Person claiming such Reward. And such Judge so certifying shall by his said Certificate appointe th said Reward to and amongst the Parties claiming the same in such Shares and Proportions as to him shall seem reasonable. And if such Sheriff die or be remov'd after such Conviction, and Demand made, the suc-

succeeding Sheriff shall pay the same within one Month after Demand and Certificate brought as aforesaid. And in Default of Payment, the Sheriff shall forfeit double the Sum he ought to have paid, with double Costs to the Persons aforesaid, their Executors or Administrators, to be recover'd in any of the Courts at Westminster, by Action of Debt, Bill, Plaint, or Information, wherein no Essoign shall be allow'd. *Ibid.*

And if any Person shall be kill'd by any such Offender, And if kill'd; endeavouring to apprehend him, then his Executors or Administrators, upon Certificate under the Hands and Seals of the Judge or Justices of Assize for the County, or the two next Justices of the Peace, which they are hereby required to give, shall receive the Sum of 40 l. from the Sheriff of the County where the Fact was done, who upon Failure of Payment shall forfeit double the said Sum, to be recover'd with double Costs as aforesaid. And all Sheriffs, upon producing such Certificates and Receipts for the Money paid by them, are impower'd to deduct in their Accounts all Monies which they shall have disburs'd as aforesaid, other than the said forfeited Sums and Costs of Suit. *Ibid.*

Provided, that if the said Sheriff hath not sufficient in his Hands to reimburse him, he shall have the same repaid by the Treasury out of the Revenue of the Crown, or by Record of Surplusage upon any other Sheriff indebted to his Majesty. *Ibid.*

And if any such Apprehender and Prosecutor is guilty of any the Offences aforesaid, not being in Prison for the said Offences, and convicting two or more Persons thereof, he shall have the said Reward of 40 l. and a Pardon for any of the said Offences committed at any time before Discovery made of such other two Persons so to be convicted. *Ibid.*

And the necessary Charge of raising the *Posse*, or such Charges of other Power as aforesaid, for enforcing this Act, or the *Posse* to be Act of 8 & 9 W. 3. cap. 27. shall be paid by the said Sheriff and allowed in his Accounts, or repaid by the Treasury as aforesaid. *Ibid.*

Provided this Act shall not extend to repeal the said Act of 8 & 9 W. 3. cap. 27. or any other Law against pretended privileged Places, or for suppressing Riots or Tumults, except where other Provision is made by this Act. *Ibid.*

And such Persons as reside within the Mint, or the Limits thereof, as shall make a full and true Discovery of all their Estates and Effects, and deliver up the same for their

charg'd from
their Debts by
the Quarter-
Sessions of
Surrey.

9 Geo. c.

Oath to be
taken by the
Debtor.

the Benefit of their Creditors, and conform to the Dis-
rections of this Act, shall upon such Discovery, &c. be
discharg'd from any Arrest or Imprisonment for any Debt
owing before the 11th of February, 1722. And it shall be
lawful for any Justice or Justices of the Peace of the
County of Surrey upon the Petition of any such Person by
Warrant under his or their Hands and Seals to order the
Person so petitioning to appear at the general Quarter-
Sessions to be held next after the Expiration of thirty
Days from the Date of such Warrant, and such Person
coming to the said Quarter-Sessions shall in open Court
subscribe and deliver in a Schedule of his whole Estate
real and personal, and the Names of his Debtors, and the
Sum secur'd and owing upon any Specialty, Contract, or
otherwise, and the Places of Abode of the Persons from
whom due, and the Witnesses who can prove such Debt
or Contract, and make Oath to the Effect following, (viz.)

*I A. B. do upon my corporal Oath, in the Presence of
Almighty God, solemnly swear, protest, and declare, that
the Schedule now deliver'd and subscrib'd by me, doth contain,
to the best of my Knowledge, Remembrance, and Belief, a full,
just, true, and perfect Discovery and Account of all Estates,
Goods, Chattels, and Effects, of what nature or kind soever unto
me in any wise belonging, and of all Debts owing to me, or to
any Person or Persons in trust for me, and of all Securities and
Contracts whereby any Money will or may hereafter become payable,
or any Benefit or Advantage accrue to me, or to my Use, or to
any Person or Persons in trust for me, and the Names and Places
of Abode of the several Persons from whom such Debts are due
and owing, and of the Witnesses that can prove such Debts or
Contracts; and that neither I nor any Person or Persons in trust
for me have any Land, Money, Stock, or any Estate real or per-
sonal, in Possession, Reversion, or Remainder, other than what
are in the said Schedule contain'd, except wearing Apparel, Bed-
ding, for my self and Family, Working Tools and necessary Im-
plements for my Occupation and Calling, and these in the whole
not exceeding the Value of 20 l. and that I have not directly or
indirectly sold, lessen'd, or otherwise convey'd, dispos'd of, in
trust, or conceal'd, all, or any part, of my Land, Money, Goods,
Chattels, Stocks, Debts, Securities, Contracts, or Estates real
or personal, whereby to secret, conceal, or secure the same, or to
receive or expect any Benefit, Profit, or Advantage thereof, or
to defraud or deceive any Creditor or Creditors to whom I am in-
debted in any wise howsoever; and that I did reside and inhabit
in the Mint aforesaid, or Limits, or pretended Limits thereof,
for Shelter and Protection on the 11th of February, 1722.*

So help me God.

Which

Which Schedule so subscrib'd as aforesaid shall remain with the Clerk of the Peace of *Surrey* for the better Information of the Creditors of such Person. And all Estates real and personal, Debts and Effects, mention'd Debtor's in such Schedule, shall immediately after the Discharge Estate vested of such Person be vested in the Clerk of the Peace afore- in the Clerk said, who is hereby authoriz'd by Order of the Quarter- of the Peace: Sessions to make an Assignment of the same to such of the Who shall Creditors of the said Person as the major part of them, assign it to who shall apply for the same by any Writing under their the Creditors' Hands, shall appoint (for which Assignment the Clerk of the Peace shall take one Shilling, and no more) in trust for themselves and the rest of the Creditors; which As- 9 Geo. c; signees are impower'd in their own Names to sue for and receive the same, and give Discharges, and to divide the same among the Creditors; who within two Months after Notice of such Dividend publish'd in the *Gazette*, shall produce to such Assignees an Oath in Writing made be- Who shall fore a Justice of Peace proving their Debts in equal Pro- prove their portion. and after the same receiv'd, to render the Over- Debts before plus (if any be after their just Debts and Charges deduct- a Justice of ed) to such Person so discharg'd, his Executors, or Admi- Peace. nistrators. *Ibid.*

And the Justice or Justices who shall grant any War- rant for any Person's appearing at the Quarter-Sessions aforesaid, shall give in a Writing importing Notice to all the Notice of the Creditors of such Person's petitioning under his or their Debtor's Peti- Hands and Seals, that he or they have granted such War- tion. rant, and that the said Person hath petition'd to be dis- charg'd. And the Person so petitioning shall cause the said Notice, or a true Copy thereof, to be left for, or To be serv'd serv'd upon, all his Creditors, their Executors or Admi- upon all with- nistrators, inhabiting in *London* or *Westminster*, or the in ten Miles Weekly Bills, or within ten Miles of the *Mint*; which No- of the *Mint* tice shall be left with the said Persons thirty Days before thirty Days the said Quarter-Sessions, and publick Notice shall also be before the given in the *Gazette*, containing the Name, Trade, Oc- Sessions. cupation, and last Place of Abode, of every such Person And Notice so to be discharg'd before he came into the *Mint*, for put into the which Notice in the *Gazette* there shall be paid one Shil- *Gazette*. ling for each Name, and no more, thirty Days before such Quarter-Sessions. And if it shall be prov'd upon Oath at the Sessions that such Notice in Writing was so serv'd or left as aforesaid, and such Notice inserted in the That he was *Gazette* thirty Days before such Sessions, and that the Per- in the *Mint* son so petitioning was actually residing in the *Mint* for the 11th of Shelter on the 11th of *February*, 1722. and hath conti- *February*, 1722. ated to reside there till the time of his petitioning, and and continu- the

ed there ever since. the said Oath be not disp^o'd by any credible Person upon Oath then the Justices at the said Sessions, being

And this be satisfy'd of the Truth of the Premises, shall by Order of prov'd upon the Sessions discharge such Person from any future Arrests Oath. or Imprisonment for any Debts owing by him before the

The Sessions 11th of February, 1722. *Ibid.*

shall discharge And if the Clerk of the Peace of *Surrey* shall delay to the Debtor of give any Person so discharg'd sixty Days after his Dis-

all his Debts charge a Duplicate thereof on Payment of 1 s. or shall contracted be take more than 1 s. for such Duplicate, he shall forfeit

for the 11th to the Person requesting the same 5 l. with Costs, to be of February. recover'd by Action of Debt Bill, Plaint, or Information,

1722. in the Courts at *W.minster*. where no Essoign, &c. shall Clerk of the be allow'd or by Order of the Justices at their Quarter-

Peace to give Sessions who are impower'd to levy the same by Distress a Duplicate of and Sale of the Goods of the Offerder. *Ibid.*

such Dis And if any Person residing or pretending to reside charge on pain in the *Mint* shall forswear himself in any of the Matters

of 5 l. aforesaid, he shall be adjudg'd guilty of Felony without 9 G. o. c. Benefit of Clergy. *Ibid.*

Mint for- And if any Person discharg'd pursuant to this Act shall swearing him- he imprison'd by reason of any Judgment Debt, Con-

self guilty of tempt &c. contracted before the said 11th of February, Felony with 1722. the Judges of the Court where the Process issued,

out Benefit of upon shewing the Duplicate of his Discharge, shall release Clergy. him out of Custody. so as such Person so arrested, &c.

Judge to dis do give a Warrant of Attorney to appear to such Action, charge such and to plead thereto. *Ibid.*

Mint if ar- And if any Action shall be brought against any Justice rested Sheriff, Bailiff Officer or Minister for any thing done

On giving an in pursuance of this Act, he may plead the general Issue, Appearance. and give this Act in Evidence. And if the Plaintiff be

Justice, &c. Nonsuit, or discontinue, or if a Verdict pass against him, sued to have or Judgment upon Demurrer, the Defendant shall have

treble Costs. treble Costs. *Ibid.*

No other Provided, that the Discharge of any Person by this Act Debtor dis- shall not discharge any other Person from any Debt, or

charg'd here- any part thereof. *Ibid.*

by. Provided, that any Person discharg'd by this Act, in

Mint may case a *Scire Facias*, or Action of Debt, be brought against plead gene- him upon any Judgment obtain'd before the said 11th of

rally that he February may plead generally that he was actually residing was discharg'd in the *Mint* on the said 11th Day of February, and was

pursuant to discharg'd according to this Act without pleading any this Act. other Matter specially. And if any other Action be

brought against him for any Debt due before the said 11th of February to plead, that such Debt was contract- ed before the said 11th of February, and that he was actu- ally

ally resident in the Mint then and duly discharg'd in the manner aforesaid without pleading any other Matter specially, whereto the Plaintiff may reply that such Defendant was not Resident in the Mint then; or any other Matter which may shew the Defendant not to be entitled to the Benefit of this Act. And if the Plaintiff be Non-suited, or discontinue or a Verdict pass against him or Defendant Judgment be given against him upon Demurrer, the Defendant shall have double Costs. *Ibid.*

Provided that no Person shall be discharg'd by this Act from any Debts or Arrests unless such Discharge be obtained before the 10th of July, 1724. *Ibid.*

Provided also that no Person against whom a Commission of Bankrupt hath been awarded, and whose Certificate hath not been allow'd, shall have any Benefit by this Act. *Ibid.*

Provided, that notwithstanding any such Discharge obtained, if it appear hereafter such Discharge was obtained fraudulently, it shall be void. *Ibid.*

Provided that every Person petitioning to be discharg'd shall leave with the Justice petition'd, a List sign'd by him of all his Creditors, and also a true Copy of the Schedule containing his discovery to be sworn at the Quarter Sessions as aforesaid; which List and Copy shall be transmitted to the Clerk of the Peace of Surry, to be inspected by the Creditors gratis. *Ibid.*

Provided that no Person shall have any Benefit by this Act who is indebted to any one Person in more than the principal Sum of 50 l. besides Interest and Costs. *Ibid.*

And no Shelterer in the Mint or their Families shall be adjudg'd to have gain'd any legal Settlement in the Parish of St. George, by having rented any Houses or Lands of 10 l. per Annum, or upwards, therein unless such Shelterer hath been rated and paid to the Relief of the Poor of the said Parish, or have serv'd parochial Offices there. *Ibid.*

See Prisoners.

Decus tantum. See Jurors.

Declaration. See Pleadings.

And the Plaintiff may reply generally.

Defendant shall have Double Costs.

Not to be discharg'd after July 10 1724.

No Bankrupt to be discharg'd.

Fraudulent Discharge void.

Debtor to give in a List of his Creditors.

None to be discharg'd who owe above 50 l.

principal to any one Man. None to have gain'd a Settlement in the Mint who have not paid the Poor's Rates.

Deer-Stealers.

13 R. 2. c. 13. **N**O Artificer, Labourer, or other Layman, who hath not Lands or Tenements to the Value of 40 s. per Annum, nor any Clerk if he have not 10 l. per Annum, shall have or keep any Greyhound, Hound or other Dog to hunt, nor shall use Ferrets, Hays, Nets, Hare-Pipes or Cords to take or destroy Deer, Hares, Conneys, or other Gentlemens Game, on pain of one Year's Imprisonment. These Offences to be inquir'd of and punish'd by the Justices of Peace. *Stat. 13 R. 2. cap. 13.*

To be imprisoned for a Year.

19 H. 7. c. 11. No Person, Spiritual or Temporal, having no Park, Chase, or Forest of his own, shall keep any Nets call'd Deer-Hays or Buck-Stalls, on pain of forfeiting 40 l. for every Month he shall keep them. And no Person shall Stalk, or cause any other Person to Stalk with any Bush or Beast to any Deer in any Park, Chase, Forest, or without, unless, in his own Ground, without License of the owner, Master of the Game, or Keeper, on pain of 10 l. for every Offence. *Stat. 19 H. 7. cap. 11.*

Of Stalking
10 l.

And two Justices of Peace in their Sessions, are authoriz'd to examine the Offenders, and commit them to Prison, until they have found Sureties for the said Forfeitures; and the said Justices shall have one Tenth of the Forfeitures for their Pains. *Ibid.*

5 Eliz. c. 21. Hunting in Parks three Months Imprisonment, and treble Damages, and security for good abearing.

If any Person by Night or Day shall wrongfully and unlawfully break or enter any Park impal'd, or any other several Ground inclos'd with Wall, Pale, or Hedge, and us'd for the Breeding and Cherishing of Deer, and shall wrongfully hunt, drive, or chase out, take, kill, or flea any Deer there, he shall suffer three Months imprisonment, and pay to the Party griev'd treble Damages; and after the said three Months are expir'd, shall find good Sureties for his good abearing for seven Years. *Stat. 5 Eliz. cap. 21.*

Provided that this Act do not extend to any Park or inclos'd Ground to be us'd for Deer without a Grant from the Crown. *Ibid.*

Which security the Party griev'd may release.

And the Party griev'd may sue and take his further Remedy against the Offender, and shall recover treble Damages in any Court of Record. And upon Satisfaction of the said treble Damages the Party griev'd is impower'd to release the said Suretiship at any time within the said seven Years. And Justices of Oyer and Terminer, Justices of Assize, Justices of Peace, and Goal-delivery, in their Sessions, are authoriz'd to hear and determine

mine the said Offences ; and they are also impower'd, if Or the Court the Offender confesses his Offence, and satisfy the Party on Satisfacti- griev'd according to this Act. to discharge the said Of- on given, fender and Sureties for his good Behaviour. *Ibid.*

Every Person who shall have or keep any Greyhound 1 Jac. 1. c. 27. for Coursing of Deer or Hare (unless he shall be seiz'd Persons not in his own or his Wife's Right of Lands, Tenements or having 10 l. Hereditaments of the clear Value of 10 l. per Annum, or per Annum. or some Estate of Inheritance, or of Lands, &c. in his 200 l. in own or his Wife's Right, for term of Life or Lives, of Goods, who the Value of 30 l. per Annum, over and above all Repri- keep a Grey- zes, or be possess'd of Goods or Chattels to the Value of hound, to be 200 l. or be the Son of a Knight, or of a Baron of Par- imprison'd for liament, or of some Person of higher Degree, or the Son threeMonths, and Heir apparent of an Esquire) and be convicted there- of by Confession or two Witnesses, before two or more Justices of the Peace of the County or Place where the Offence shall be committed, or the Offender apprehended, he shall by the said Justices be committed to the Common Goal there for three Months without Bail or Mainprize, except such Offender do forthwith pay to the Church- Wardens of the Parish where the Offence shall be com- mitted, or the Party apprehended, to the Use of the Or forfeit Poor, the Sum of 40 s. And every Person who shall sell, 40 s. or buy to sell again, any Deer, Hare, Partridge, or Fea- And Persons sant, shall forfeit for every Deer so bought or sold, 40 s. selling or buy- for every Hare 10 s. every Partridge 10 s. and every Fea- ing a Deer to sant 20 s. one Moiety of the said Forfeiture to the In- sell again, 40 s. former, and the other to the Poor ; provided that no Person punish'd by this Act, shall be punish'd by any former Law. And Justices of Assize, and Justices of Peace in their Quarter-Sessions. and any two Justices of Peace out of Sessions, are authoriz'd to hear and deter- mine the said Offences. *Stat. 1 Jac. 1. c. 27.*

If any Person shall by Night or Day wrongfully or 3 Jac. 1. c. 13. unlawfully break or enter any Park, or any other several Hunting in Ground inclos'd with Wall, Pale, or Hedge, and us'd for Parks or War- keeping and breeding of any Deer or Coneys, and wrong- rens, like Pe- fully or unlawfully hunt, drive, chase, take, kill, or nalties, as by slay any of them within such Park, &c, against the Will the last Act. of the Owner, Occupier, or Possessor of the same, not having lawful Title or Authority so to do ; he shall suffer three Months imprisonment, and yield treble Damages and Costs to the Party griev'd, and find Sureties for his good Behaviour for seven Years after. And the Justices of Oyer and Terminer, and the Justices of Assize, and Justi- ces of Peace and Goal-delivery, have Power to hear and determine the said Offences, and the Party griev'd may

take his further Remedy against the Offender for his Loss and Damages in any Court of Record. And if the Offender shall make him Satisfaction as aforesaid, and confess his Crime before the Justices of Peace of the County in their Sessions, the Party griev'd may release the Sureties of the good Behaviour at any time within the said seven Years. *Stat. 3 Jac. 1. cap. 13.*

Persons keep- And if any Person not having Lands of 40 l. *per Ann.*
ing Guns or or worth 200 l. in Goods and Chattels, shall use any
Nets who Gun, Bow, or Cross-Bow, to kill Deer or Coneyes, or
have not 40 l. keep any Buckstall or Engine, Hays, Gate-Nets, Pursue-
per Annum. or Nets, Ferrer, or Coney-Dogs, except such Person as have
worth 200 l. any Grounds impark'd or inclos'd, as aforesaid, to the
may have Value of 40 s. *per Annum*, or Keepers or Warreners in
them seiz'd by their Parks, Warrens, or Grounds belonging to their
any one ha- Charge: that then any Person having Lands, &c. of the
ving 100 l. Value of 100 l. *per Annum* in Fee-simple, Fee tail, or for
per Annum. Life, in his own or his Wife's Right, may take from such
Offender to his own Use, such Guns, Engines, Nets and
Dogs. *Ibid.*

Sessions may And if any Offender shall come before the said Justices
discharge the of Peace in their Quarter-Sessions, and acknowledge their
Security on Offence, and satisfy the Party griev'd according to this
Satisfaction Act, the said Justices are empower'd to discharge his said
made. Recognizance and the Parties bound. *Ibid.*

Not to ex- Provided this Act do not extend to any Park or in-
tend to unli- clos'd Ground to be made for Deer or Coneyes without the
cens'd Parks, Licence of the Crown, nor to any Offences for the hunt-
&c. ing or killing Deer or Coneyes which shall be committed
in the day time. *Ibid.*

7 Jac. c. 13. Whereas by a Proviso in the 3 Jac. 1. cap. 13. It is
The Proviso enacted, That the said Act should not extend to any the
in the last Act Offences concerning the hunting, chasing or killing of
that it should Deer or Coneyes in the day time, but only to such Of-
extend only to fences as should be committed in the Night; it is hereby
the killing enacted, That so much of the said Proviso as concerneth
Deer in the the hunting, chasing or killing of Deer only shall be re-
Night, repeal'd. pealed and made void. *Stat. 7 Jac. c. 13.*

Offender to And if any Person shall commit any of the Offences in
forfeit 10 l. the said Statute mention'd, concerning the unlawful cha-
or treble Da- sing, hunting, driving, taking, killing, or slaying of
mages to the Deer in any Park or inclos'd Ground, which shall be made
Party griev'd. or us'd for Deer, against the Will of the Owner, Occupier
or Possessor, or Keeper of the same, such Offenders shall
for every such Offence pay to the Party griev'd 10 l. or
treble Damages and Costs at the election of the Party
griev'd, to be recover'd as by the said Statute is appointed for

Reco-

Recovery, Taxing or Assessing of the said treble Damages. *Ibid.*

This Act to continue to the End of the first Sessions of the next Parliament, and by the 3 *Car.* 2. c. 4. further continued to the End of the first Sessions of the then next Parliament, and by the 17 *Car.* 1. cap. 4. made perpetual, *Ibid.*

If any Person shall unlawfully course, kill, hunt, or take away any red or fallow Deer in any Forest, Chase, Purlieu, Paddock, Wood, Park, or other Ground where Deer are usually kept, without the Consent of the Owner or Person chiefly intrusted with the Custody thereof, or shall be aiding or assisting therein, and be convicted by Confession or one Witness before one or more Justices of the Peace, such Person being prosecuted within six Months after the Offence, shall forfeit for every such Offence 20 *l.* to be levied by distress and sale, by Warrant from the Justice before whom convicted; one moiety to the Informer, and the other to the Owner of the Deer; and for want of distress, the Offender shall be committed to the House of Correction for six Months, and there be put to hard Labour, or to the common Goal for a Year without Bail or Mainprize, at the discretion of the said Justices, and not be discharg'd till he have given sufficient Sureties for his good Behaviour for one Year after his Enlargement. Provided that where an Offender shall be punish'd by this Act, he shall not be prosecuted upon any other Law or Statute for the same Offence. *Stat.* 13 *Car.* 2. c. 10.

If any Person after the 25th of March, 1692. shall unlawfully course, hunt, take in Toils, kill, wound, or take away any red or fallow Deer in any Forest, Chase, Purlieu, Paddock, Wood, Park, or other Ground inclos'd where Deer are kept, without Consent of the Owner or Person chiefly intrusted with the Custody thereof, or shall be aiding or assisting therein, and be convicted by Confession or Oath of one Witness before one or more Justices of Peace of the County where the Offence shall be committed or the Party apprehended, and such Person prosecuted within twelve Months, every such Person so offending by unlawful coursing or hunting only, when no Deer is taken, wounded, or kill'd, shall forfeit 20 *l.* and if any Deer shall be wounded, taken in Toils, or kill'd, such Person shall forfeit for every Deer so wounded, &c. 30 *l.* to be levied by distress and sale, by Warrant from a Justice before whom such Conviction shall be made; one third of the Forfeitures to the Informer, another to the Poor where the Offence shall be committed, and the other third to the Owner of such Deer; and for want

13 *Car.* 2. c. 10.
Hunting in
Parks, &c.

penalty 20 *l.*
Conviction by
one Witness
before a Ju-
stice of Peace,

In default of
a Distress Of-
fender impris-
on'd for a
Year or sent
to the House
of Correction
for six Months.

3 & 4 *W. &*
M. c. 10.

Penalty of
hunting Deer
in Parks, &c.
20 *l.*

Taking or
wounding
Deer, 30 *l.*
To be levied
by distress and
sale.

Or be imprisoned for a Year, and Pillory'd.

want of a distress, such Person shall suffer one Years Imprisonment without Bail or Mainprize, and be set in the Pillory for an Hour some Market-day in the next adjoining Town to the Place where such Offence shall be committed. *Stat. 3 & 4 W. & M. c. 10.*

Search to be made for Venison or Skins as for stol'n Goods.

And every Constable, Headborough and Tythingman authoriz'd by the Warrant of one or more Justices of Peace, shall, and are hereby requir'd to enter and search, as where Goods are stolen or suspected to be stolen, the House, Out.Houses, or other Places belonging to such suspected Persons; and if any Venison, or Skin of any Deer, or Toil, shall be there found, such Officer shall apprehend the Offender, and carry him before a Justice of Peace of the County; and if he do not give a satisfactory Account how he came by such Venison, Skins or Toils, or in some convenient Time to be set by the Justice, produce the Party of whom he bought the same, or some credible Witness to attest the Sale of the said Venison or Skins, he shall be convicted, and subject to the Forfeitures and Pains inflicted for the killing of any one Deer as aforesaid. *Ibid.*

And if any Person to forfeit as for killing a Deer.

And after Conviction it shall be lawful for the Constable, or other Officer or Person prosecuting, to detain in Custody such Offender, if he do not presently pay the Money due by the said Conviction, during such reasonable Time as a Return may be made to the Warrant for a Distress, so that such detainer doth not exceed two Days. *Ibid.*

Owners of Deer may resist Offenders, and be indemnify'd.

And all Owners of Deer in any inclos'd Ground, or any Persons under them, may oppose and resist such Offenders, and be indemnify'd for so doing, as if the Fact had been committed within an ancient Chase or Park. *Ibid.*

No *Certiorari* till 50 l. Security given to pay Costs.

And no *Certiorari* shall be allow'd to remove any Conviction or other Proceeding concerning any thing in this Act, unless the Party convicted shall before the Allowance of such *Certiorari* be bound to the Prosecutor in 50 l. with such Sureties as the Justices, before whom such Offender was convicted, shall think fit, with Condition to pay the Prosecutor within one Month after such Conviction confirm'd, or *Procedendo* granted, full Costs and Damages to be asserted upon Oath; and in default thereof, the said Justices shall proceed to Execution of such Conviction, as if no *Certiorari* had been awarded. *Ibid.*

Provided that any Offenders punish'd by this Act shall not be prosecuted by any other Law for the said Offence. *Ibid.*

Provided that Persons prosecuted for what they shall do in pursuance of this Act may plead the general Issue, and give the special Matter in Evidence. *Ibid.*

Provided also, that if any Person shall in the Night-time pull down and destroy the Pales or Walls of any Pulling down Park, Forest, Chase, Purlieu, Paddock, Wood, or other Parks, &c. Ground inclos'd, where Deer are kept, and be convicted three Months by the Oath of one Witness before one or more Justices imprisonment of the Peace of the County where the Offence is committed, he shall by Warrant of such Justices be committed to Prison for three Months without Bail or Mainprize. *Ibid.*

No *Certiorari* shall be allow'd to remove any Conviction 5 *Geo. c. 15.* or other Proceedings for any Matter or Thing in the said No *Certiorari* Statute of the 3 & 4 *W. & M. cap. 10.* unless the Party till 60 *l.* Security is given for the curity given Payment of the Costs and Damages to the Prosecutor, to prosecute become also bound to the Justices before whom such Conviction was, and with such Sureties as they shall approve, in the penal Sum of 60 *l.* to prosecute such *Certiorari* with effect, and to pay such Justices the Forfeitures due by such Conviction, or to render the Persons convicted to such Justices within one Month after such Conviction confirm'd, or a *Procedendo* granted; and in default thereof, such Justices may proceed to the Execution of such Conviction as if no *Certiorari* had been awarded. And after the Confirmation of any Conviction upon the said Statute by a superior Court, on delivering the Rule to the Justices, whereby such Conviction is confirm'd, such Justices may proceed against the Party convicted, as if a *Procedendo* had been granted. Provided that if any Person be prosecuted for what he shall do in pursuance of this Act, or the said Act of 3 & 4 *W. & M.* he may plead the general Issue, and give the special Matter in Evidence. And if a Verdict pass for the Defendant, or the Plaintiff be Nonsuit, or discontinue, or if upon a Demurrer, Judgment be given against the Plaintiff, the Defendant shall have treble Costs. *Stat. 5 Geo. c. 15.*

And if any Person be convicted by Virtue of the said Offender to Statute, he shall, before he be discharg'd out of Custody, give 50 *l.* Security to the Person against whom such Offence curity not to was committed, in 50 *l.* for his future good Behaviour, offend again, and that he will not offend in like manner; and on his before he be failing to enter into such Bond, he shall be committed to discharg'd. the County-Goal till it be given. And if after his becoming bound, he shall be convicted for any Matter in the said Statute, the said Penalty may be recover'd, with full Costs of Suit; which shall be distributed as the Forfeitures

tures by the said Act are distributed. And the Party convicted shall be likewise liable to the Pains and Forfeitures in the said Act.

Keeper assisting Deer-Stealers to forfeit 50 l.

And if any Keeper or other Officer of any Forest Chase, Purlieu, Paddock Wood, Park, or Place where Deer are kept, shall be convicted on the said Statute of killing or taking away any Deer or aiding or assisting therein, without consent of the Owner or Person chiefly intrusted with the Custody of such Forest, &c. where such Deer shall be kill'd or taken away, such Keeper or other Officer being convicted, shall forfeit 50 l. for each Deer so kill'd or taken away, to be levied by distress, and distributed as the Forfeitures in the said Act; and for want of

Or be pillor'd and suffer three Years imprisonment.

such distress, he shall suffer three Years Imprisonment and be set in the Pillory two Hours some Market day in the next adjoining Town to the place where the Offence was committed. *Ibid.*

Pulling down Park pales &c. punish'd asking of Deer.

And if any Person shall cause to be pull'd down or destroy'd the Pales or Walls of any Park, Forest, &c. where Deer are kept, without consent of the Owner or the Person chiefly intrusted with the Custody thereof and be convicted by confession, or the Oath of one Witness, before one or more Justices of Peace of the County where the Offence was committed, he shall be subject to the Pains and Forfeitures inflicted by the said Statute of 3 & 4 W. & M. c. 10. for the killing of any one Deer. *Id.*

5 Geo. c. 28. Persons killing Deer to be transported.

If any Person after the first of May 1719 shall enter any Park, Paddock, or other inclos'd Ground where Deer are kept, and wilfully kill any Deer there without consent of the Owner or Persons intrusted with the Custody of such Park &c. or shall be aiding or assisting therein, and be indicted for such Offence before any Judge or Justices of Goal-delivery for the County where such Park, &c. shall lie, and be convicted by Verdict or Confession, he shall be sent to his Majesty's Plantations for seven Years; and the Court or any subsequent Court held at the same place, are impower'd to transfer and make over such Offenders by Order of Court to the Use of any Person who shall contract for the performance of such transportation. *Stat. 5 Geo. c. 28.*

Former Laws to remain in Force.

Provided that nothing herein shall extend to repeal or alter any former Law or Statute for the punishment of Deer-Stealers. And where any Person shall be punish'd by this Act, he shall not be prosecuted for the same Offence by force of any other Law. *Ibid.*

9 Geo. c.

If any Person arm'd with Swords, Fire-Arms, or other offensive Weapons, and having his Face black'd, or being otherwise disguis'd appear

disguis'd, shall appear in any Forest, Chase, Park, Pad- in any Park, dock, or Grounds inclos'd, where Deer are usually kept, Warren, &c. or in any Warren or place where Hares or Coneys are Or upon any usually kept, or in any high Road, open Heath, Common Road or or Down or shall unlawfully hunt, wound, kill, destroy, Common. or steal any red or fallow Deer, or rob any Warren or Or hunt any place where Hares or Coneys are usually kept, or steal or Deer. &c. take away any Fish out of any River or Pond; or if any Or take away Person shall unlawfully hunt wound, kill, destroy or steal Fish. any red or fallow Deer fed or kept in any of his Majesty's Or if any Forests or Chases inclos'd with Pales or other Fences. or Person wound in any Park, Paddock or Grounds inclos'd where Deer or destroy are usually kept, or shall unlawfully and maliciously break Deer in any down the Head or Mound of any Fish-pond whereby the Forest, &c. Fish shall be lost or destroy'd; or shall unlawfully and Or break maliciously kill, maim, or wound any Cattel, or cut down any down or destroy any Trees planted in any Avenue, Gar- Fish-pond. den. Orchard or Plantation for Ornament, Shelter or Pro- Or maim any fit; or shall fire any House, Barn or Out-House, or any Cattel. Hovel Cock. Mow or Stack of Corn, Straw, Hay or Or cut down Wood; or wilfully and maliciously shoot at any Person in Trees. any dwelling House, or other place, or knowingly send a Or fire any Letter without a Name subscrib'd, or with a fictitious House, Barn, Name. demanding Money, Venison, or other valuable or Stack of Thing; or shall rescue a Person in Custody of any Offi- Corn or Wood cer or other Person for any the Offences aforesaid; or if Or shoot at any Person shall by Gift or a Promise of a Reward, pro- any Person. cure any subject to join in any such unlawful Act. such Or demand Offender shall be guilty of Felony without Benefit of Cler- Money, Veni- gy. Stat. 9 Geo. c. son, &c.

* And every Person who since the 2d of February, 1722. Or rescue an hath committed any of the Offences aforesaid, who shall Offender. not surrender himself before the 24th of July, 1723. to Or invite one of the Judges of the King's Bench, or to a Justice of any to join perce of the County where he committed such Offence, them in such and make a full discovery upon Oath of his Accomplices, Offences. by giving a true Account of their Names, Occupations Guilty of Fe- and places of Abode and to the best of his Knowledge lony without where they may be found shall be adjudg'd guilty of Benefit of Felony without Benefit of Clergy. *Ibid.* Clergy.

† Provided that every such Offender not in Custody on * Offender the 1st of June, who shall surrender himself before the not surrender- said 24th of July and shall make such Confession and ing himself, Discovery as aforesaid shall be pardoned for the Offences and discover- ing his Ac- so by him confess'd. *Ibid.* complices,

guilty of Felony without Clergy. or shall be pardoned.

† But on Surrender and Confessi-

And

Person charged with such Offence,

Not surrendering upon publishing an Order of Council to that effect,

To be attainted of Felony without Trial.

And Persons

harbouring or Surrender of any Person so charged with any of the Offences afore-
relieving him, fences afore-
guilty of Fe- such Person, knowing him to have been so charged and
lony without requir'd to surrender, shall be guilty of Felony without
Clergy. Benefit of Clergy. *Ibid.*

Person apprehended before Justice of Peace, Magistrate, or other Officer, from ap-
the time ex- prehending such Offender against whom such Informa-
pir'd, to have tion shall be given, by the ordinary course of Law; and
This Trial. if such Offender shall be taken and secur'd, in order to be
brought to Justice, before the time he shall be requir'd to
surrender, no further proceedings shall be had upon such
Order of Council, but he shall be brought to Tryal by
due course of Law. *Ibid.*

And if any Person shall be charg'd with any of the Offences afore-
said before any two Justices of Peace of the County where the same shall be committed, by informa-
tion of one or more Persons upon Oath by him or them
subscrib'd, such Justices shall forthwith certify under their
Hands and Seals, and return such Information to one of
the Principal Secretaries of State, who is requir'd to lay
the same as soon as conveniently may be, before the
Council; whereupon it shall be lawful for his Majesty to
make an Order in Council, requiring such Offender to
surrender himself within forty Days to one of the Justices
of the King's Bench, or to a Justice of Peace; which
Order shall be publish'd in the Gazette, and forthwith
transmitted to the Sheriff of the County where the Of-
fence is committed, and shall within six Days after receipt
thereof, be proclaimed by him or his Officers between Ten
in the Morning and Two in the Afternoon in the Market-
places on the Market-days of two Market-Towns in the
same County, near the place where such Offence was com-
mitted: and a Copy of such Order shall be affix'd upon
some publick place in such Market-Towns. And if such
Offender shall not surrender himself pursuant to such Or-
der, he shall from the Day appointed for his said
surrender, be adjudg'd and taken to be convicted of
Felony without Benefit of Clergy; and the Court of
King's Bench, or the Justices of Oyer and Terminer and
Goal-delivery for the County where the Offence is sworn
to be committed, upon producing such Order in Council,
under the Seal of the Council, shall award Execution at-
tained against such Offender as if he had been convicted and at-
tainted in the King's Bench, or before such Justices of
Oyer and Terminer and Goal-delivery. *Ibid.*

And every Person who, after the time appointed for the
Surrender of any Person so charged with any of the Of-
fences afore-
relieving him, fences afore-
guilty of Fe- such Person, knowing him to have been so charged and
lony without requir'd to surrender, shall be guilty of Felony without
Clergy. Benefit of Clergy. *Ibid.*

Provided that nothing herein shall prevent any Judge,
Justice of Peace, Magistrate, or other Officer, from ap-
prehending such Offender against whom such Informa-
tion shall be given, by the ordinary course of Law; and
if such Offender shall be taken and secur'd, in order to be
brought to Justice, before the time he shall be requir'd to
surrender, no further proceedings shall be had upon such
Order of Council, but he shall be brought to Tryal by
due course of Law. *Ibid.*

And the Inhabitants of every Hundred in England shall make full Satisfaction to all Persons, their Executors, and Administrators, for the Damages they shall sustain by the killing or maiming of any Cattel, cutting down or destroying Trees, firing any House, Barn, Out-House, Ho-vel, Cock, Mow, or Stack of Corn, Straw. Hay or Wood, committed by any Offender against this Act: and the Person sustaining such Damages, are hereby inabled to sue for and recover the same, so as they do not exceed the Sum of 200 l. against the Inhabitants of such Hundred. And if Execution shall be sued against any such Inhabitants, the other Inhabitants of the Hundred shall be ratably Taxed towards an equal Distribution for the Relief of such Inhabitant; which Tax shall be made and levied in such manner as is prescribed for the levying of Damages recover'd against Inhabitants of Hundreds in cases of Robberies by the 27 Eliz. *Ibid.*

Provided that no Person shall recover any Damages by Notice to be this Act, unless by himself or his Servants, within two Days after such Damage or Injury done, he shall give Notice thereof to some of the Inhabitants of the Town, Village or Hamlet near the place where such Fact shall be committed; and within four Days after such Notice, give in his Examination upon Oath, or the Examination upon Oath of his Servants who had the Care of his Houses, made of the Out-Houses, Corn, &c. before a Justice of Peace of the County, Liberty or Division where the Fact was committed, inhabiting within the Hundred where the same was committed, or near the same, whether he or they do know any of the Persons that committed such Fact; and if it be confes'd that he or they do know any of the said Persons, then he or they so confessing shall be bound by Recognizance to prosecute such Offenders according to Law. *Ibid.*

Whether they knew the Offenders.

Provided that where any one of the said Offenders shall be apprehended and convicted within six Months after the Offence, no Hundred or Inhabitant thereof, shall be liable to make satisfaction to the party injur'd. *Ibid.*

If Offender be convicted in six Months, the Hundred not liable.

Provided also, that no Person shall be inabled to bring any Action against the Inhabitants of any Hundred, except the Parties sustaining such Damage shall commence his Action within one Year after the Offence. *Ibid.*

Action to be brought within one Year.

And it shall be lawful for any Justice of Peace to issue his Warrant to any Constable or other Peace-Officer, authorizing him to enter any House to search for Venison stole or unlawfully taken contrary to the Statutes against Deer-stealers, in such manner as he may issue his Warrant to search for stole Goods. *Ibid.*

Search for Venison as for stolen Goods,

And

Person kill'd And if any Person shall apprehend, or cause to be in apprehend-convicted any of the Offenders aforesaid, and shall be ing an Offen-kill'd or wounded, so as to lose an Eye or the Use of any der, his Ex-Limb in apprehending, or endeavouring to apprehend such ecutors to Offender, upon proof thereof made at the Quarter-Sess. have 50 l. and ons of the County or place where the Offence was com- the like Re-mitted or the party was kill'd or receiv'd such Wound ward to one by the person so apprehending, and causing the said Of- who loses an fender to be convicted or the person so wounded, or the Eye or a Executors or Administrators of the party kill'd, the Limb. Justices of the said Sessions shall give a Certificate thereof

Offences a-
gainst 3 & 4

W. & M. may
be commenc'd

within three
Years.

Offences a-
gainst this Act

try'd in any
County.

Work no
Corruption

of Blood, &c.
Read at the

Quarter-Sessi-
ons and Leet.

To continue
three Years.

Person buying
stolen Veni-

son or Skins,
punishable by

the 3 & 4 W.
& M.

And every Prosecution for any Offence committed a- gainst the 3 & 4 W. & M. c. 10. for the Discovery and Punishment of Deer-stealers, may be commenc'd within three Years after the Offence committed. *Ibid.*

And every Offence committed against this Act may be enquir'd of, try'd and determin'd in any County of Eng- land, as if the Fact had been therein committed. Provi- ded that no Attainder for any Offence made Felony by this Act shall work any Corruption of Blood, loss of Dower, or forfeiture of Lands, Tenements, Goods or Chattels. And this Act shall be openly read at every Quarter-Sessions, and at every Leet or Law-day. *Ibid.*

This Act to continue for three Years from the 1st of June, 1723. and from thence to the end of the next Sessions of Parliament. *Ibid.*

And if any Venison, or Skin of any Deer shall be found in the Custody of any person who bought the same of any one who might be justly suspected to have come un- lawfully by it, if he does not produce the party of whom he bought it, or prove upon Oath the Name and Place of Abode of such Party, then the person who bought the same, shall be convicted of such Offence by any one or more Justices of the Peace, and shall be subject to the pains inflicted for killing a Deer, by the 3 & 4 W. & M. c. 10. *Ibid.*

Devise.

Widows may bequeath the Crop of their Ground as *Merton. 20 H. 3.*
 well of their Dowers, as of other their Lands and *c. 2.*
 Tenements, saving to the Lords of the Fee their Services. Widows may
Stat. of Merton. 20 H. 3. c. 2. devise their

In case any Incumbent happen to die, and before his Crops.
 Death hath caus'd any of his Glebe-Lands to be ma- *28 H. 8. c. 11.*
 nur'd and sown at his proper Costs and Charges, he may Incumbents
 make and declare his Testament of all the Profits of the may devise
 Corn growing upon the said Glebe-Lands so manur'd and the Corn on
 sown. *Stat. 28 H. 8. c. 11.* their Glebe.

Every Person having any Manors, Lands, Tenements, *32 H. 8. c. 1.*
 or Hereditaments holden in Soccage, or of the nature of Persons may
 Soccage-Tenure (and not having any Lands, &c. holden devise their
 of the King by Knights-Service, by Soccage-Tenure in Lands holden
 Chief, or of the nature of Soccage-Tenure in Chief, nor by Soccage-
 of any other Person by Knights-Service) shall have power Tenure.
 to give, dispose, will and devise, as well by his last Will
 and Testament in writing or otherwise, by any Act or
 Acts lawfully executed in his Life, all his said Manors,
 Lands, Tenements or Hereditaments, at his pleasure.
Stat. 32 H. 8. cap. 1.

And every Person having any Manors, Lands, Te- And Lands
 nements, or Hereditaments holden of the King in Soc- holden in Soc-
 cage, or of the nature of Soccage-Tenure in Chief, and cage in Chief,
 having any other Manors, Lands, &c. holden of any other if none by
 Person in Soccage, or of the nature of Soccage-Tenure, Knight's Ser-
 and not having any Manors, Lands, &c. holden of the vice.
 King by Knight's Service, nor of any other Lord or
 Person by Knight's Service, shall have full power to give,
 will, dispose and devise, as well by his last Will and
 Testament in writing, as otherwise by any Act executed
 in his Life, all his said Manors, Lands, &c. at his plea-
 sure. *Ibid.*

And every Person having any Manors, Lands, Tene- And two
 ments or Hereditaments of Estate of Inheritance holden thirds of their
 of the King in Chief by Knight's Service, or of the Lands holden
 nature of Knight's Service in Chief, shall have power by his of the King
 last Will, or otherwise by any Act lawfully executed in by Knight's
 his Life, to give, dispose, will, or assign two parts of the Service in
 same Manors, Lands, &c. in three parts to be divided, Chief.
 or as much of the said Manors, Lands, &c. as shall amount
 to the yearly Value of two parts of the same, to
 and for the Advancement of his Wife, preferment of
 VOL. II. S his

his Children, and payment of his Debts, or otherwise at his Will and Pleasure. *Ibid.*

As also of And every Person having such Lands, &c. holden of Lands holden the King by Knight's Service, and having other Lands, of the King by &c. holden of the King, or any other Person by Knight's Knight's Ser- Service, or otherwise; may give, dispose, will or assign by his vice in Chief, last Will in writing, or by any other Act lawfully executed and by Knts. in his Life, two parts of the same Lands, or as much as Service of the shall amount to the yearly Value of two parts of the same King & others at his pleasure as aforesaid. *Ibid.*

And where And if any Person hold any Lands, &c. of any other Lands are Lord than the King by Knight's Service, and other Lands, holden by Kts. in Socage, he may dispose of two thirds of his said Lands Service of any holden by Knight's Service, and all his Lands holden by other than the Socage Tenure, as aforesaid. *Ibid.*

King, and o- And if any Man hold Lands only of the King by ther Lands in Knight's Service, and not in Chief; or hold Lands of Socage. the King by Knight's Service, and not in Chief; and also Two thirds of hold Lands of any other Person by Knight's Service, and Lands holden hold any other Lands of any Person in Socage, he may only of the devise and assure two parts of the said Lands holden by King by Kts. Knight's Service of the King and two parts of the Lands Service, and holden of any other Person by Knight's Service, and all not in Chief, his Lands holden by Socage at his pleasure, as afore- and in Chief said. *Ibid.*

of the King, The Words Of Estate of Inheritance in the 30 H. 8. shall and of others, be expounded of Estates in Fee Simple only. Stat. 34 & may be devis'd 35 H. 8. cap. 5.

34 & 35 H. 8. And every Person having a sole Estate, or Interest in c. 5. Fee-Simple, or seis'd in Fee Simple, in Coparcenary or in Exposition of Common in Fee-Simple, of any Manors, Lands, Tene- the former ments, Rents, or other Hereditaments in Possession, Re- Statute. version, or Remainder; or of Rents or Services incident to Fee-Simple in any Reversion or Remainder, and having no Manors, Lands, Coparcenary, or Tenements holden of the King, or any other by or in Common Knight's Service, shall have power to give, dispose, will in Possession, or devise to any Person or Persons, except Bodies Politick Reversion or and Corporate, by his last Will and Testament in writ- Remainder, or ting, or by an Act lawfully executed in his Life, by him- Rent or com- self solely, or by himself and others jointly, severally or mon outLand particularly, or by all those ways, as much as in him of holden in Right is or shall be, all his said Manors, Lands, Tenements, Socage, de- Rents or Hereditaments, or any Rents Commons, or other visable. Profits out of the same, at his own Will and Pleasure. *Id.*

Such Lands, And all Persons having a sole Estate, or Interest in Fee- &c. held of Simple, or seis'd in Fee-Simple, in Coparcenary, or in Com- the King by mon in Fee-Simple, of any Manors, Lands, &c. held of the Kts. Service King by Knight's Service in Chief, shall have power to dispose in Chief.

or will to any Persons, except Bodies Politick and Corporate, Two thirds two parts of all the said Manors, Lands, &c. as aforesaid, at devisable. his Will and Pleasure; and the said Will so declar'd shall be good for two parts of the said Lands, &c. although the Will be made of the Whole. *Ibid.*

And all Persons having a sole Estate, or Interest in Or holden of Fee-Simple, or feis'd in Fee-Simple in Coparcenary, or in the King and Common in Fee-Simple, of any Manors, Lands, &c. others by holden of the King by Knight's Service, and not in Chief, Knights Ser- or holden of any other Person by Knight's Service, shall vice. have power to dispose and devise two parts of the said Lands, &c. as aforesaid; and the said Will shall be good Good for two for two parts of the said Lands, &c. although made of parts, though the Whole. And also for the Whole of all other such made of the Lands, &c. not holden by Knight's Service. *Ibid.* Whole.

And it is declar'd, That Wills or Testaments made of any Lands, Tanements, or other Hereditaments by any Woman Covert, or Person within the Age of twenty one Years, Idiot, or by any Person of unsound Memory shall not be good in Law. *Ibid.*

All Tenures by Knight's Service, and by Soccage in 12 Car. c. 24. of the King, are by this Act taken away and dis- Tenures by charg'd, and all Tenures turn'd into free and common Knight's Ser- Soccage, so that now no Person lies under any Restraint in the vice, &c. ta- disposal of his Lands, but may devise all or any part of his Lands ken away, and by his last Will and Testament at his Pleasure. any Lands

And where any Person hath any Child or Children un- may be dis- der the Age of twenty one Years, and not married at the pos'd by Will, time of his Death, whether such Child be born at that time, or in *Ventre sa mere*, or whether such Father be within the Age of twenty one Years, or at full Age, It shall be lawful for him by Deed executed in his Life-time, or by his last Will and Testament in writing in the Pre- A Father may sence of two or more credible Witnesses, to dispose of the devise the Tu- Custody and Tuition of such Child or Children for and ition of his during such time as he or they shall respectively remain Children to under the Age of twenty one Years, or any lesser time, to whom he any Person or Persons, in Possession or Remainder, other pleases. than Popish Recusants. And such disposition shall be good against all Persons claiming the Custody or Tuition of such Child or Children, as Guardian in Soccage or otherwise. And such Person to whom the Custody of such Children shall be so dispos'd or devis'd, may main- Who may tain an Action of Ravishment of Ward or Trespass against maintain an any Person who shall wrongfully take away or detain such Action of Ra- Child or Children, and shall recover Damages for the vishment of same in the said Action, for the Use and Benefit of such Ward. Child or Children.

And manage
their Estates.

And such Person to whose Custody such Child or Children shall be so dispos'd or devis'd, may take into their Custody to the Use of such Child or Children, the Profits of their Lands, Tenements and Hereditaments, and also the Custody, Tuition and Management of the Goods, Chattels and personal Estates of such Child or Children, till their respective Age of twenty one Years. or any lesser time, according to such disposition, and may bring such Actions in relation thereto, as by Law a Guardian in common Soccage may do.

Particular Customs sav'd.

Provided, that this Act shall not extend to alter or prejudice the Custom of the City of London, or of any other City or Town Corporate, or of the Town of Berwick upon Tweed, concerning Orphans, or to discharge any Apprentice from his Apprenticeship.

29 Car. 2. c. 3.
Estates *pur auter vie* devisable.

Any Estate held *pur auter vie* or the Life of another, shall be devisable by Will. Stat. 29 Car 2. cap. 3.

Wills of Lands must be sign'd and attested by three Witnesses.

But all Devises of Lands and Tenements devisable either by the Statutes of Wills or by Force of Custom, must be in Writing sign'd by the Devisor, or some other in his Presence by his direction, and subscrib'd in his Presence by three Witnesses at least, or else to be utterly void. *Ibid.*

Not revocable but by writing or cancelling.

No Devise in Writing of Lands, Tenements or Hereditaments, or any Clause thereof, shall be revocable otherwise than by some other Will or Codicil in Writing, or other Writing declaring the same, or by burning, cancelling, tearing or obliterating the same. by the Testator himself or in his Presence and by his direction and consent; but shall continue, &c. unless alter'd by some other Will or Codicil in Writing, or other Writing of the Devisor, sign'd in the Presence of three or more credible Witnesses declaring the same. *Ibid.*

Will of personal Estate not alterable but by writing.

No Will in Writing concerning personal Estate shall be repealed, nor any Clause or Bequest therein alter'd by Words or Will by Word of Mouth only, except the same be in the Life of the Testator committed to Writing, and read to and allow'd by him, and prov'd so to be done by three Witnesses. *Ibid.*

29 Car. 2. c. 3.
Nuncupative Will not good for above 30 l. unless prov'd by three Witnesses, &c.

No Nuncupative Will shall be good, where the Estate bequeathed exceeds the Value of 30 l. that is not prov'd by the Oath of three Witnesses that were present at the making thereof, nor unless the Testator bid the Persons present, or some of them, bear Witness that such was his Will or to that effect, nor unless made in the last Sickness of the decess'd. and in his Dwelling-House, or where he had been Resident ten Days or more before the making the Will, except where surpriz'd and taken Sick from Home, and

and dy'd before his return. And after six Months pass'd after speaking the pretended testamentary Words, no Testimony shall be receiv'd to prove any Nuncupative Will, unless the Testimony, or Substance thereof, was And committed to writing within six Days after making the said Will. And no Probate of any nuncupative Will shall within six pass the Seal of any Court till fourteen Days after the Days after Testator's Death, nor shall be prov'd till Process have making. issued to call in the Widow or next of Kin, to contest it, How prov'd. if they will. Provided, Soldiers in actual Service, and Mariners at Sea, may dispose of their personal Estate as they might before the Act. *Ibid.*

All Wills concerning Lands, or any Rents, Profits, Term or Charge out of the same whereof the Devisors shall be seisd in Fee-Simple, in Possession, Reversion, or Remainder, shall be deem'd to be fraudulent and void against Creditors, upon Bonds or other Specialties, their Executors, Administrators, &c. Stat. 3 & 4 W. & M. c. 14.

3 & 4 W. & M. c. 14.
Devisees of Lands deem'd fraudulent against Bond, Creditors, &c.

And every such Creditor may maintain an Action of Debt upon the said Bonds and Specialties against the Heir at Law and such Devisee jointly; and such Devisee shall be liable and chargeable for a false Plea, as an Heir at Law should have been for any false Plea pleaded, or for not confessing the Lands and Tenements to him descended. *Ibid.*

Provided, that where there shall be any Limitation, Devise, or Disposition of any Lands or other Hereditaments, for raising or payment of any just Debt, or any Portion or Sum of Money for any Child or Children other than the Heir at Law, in pursuance of any Marriage Contract or Agreement in Writing *bona fide*, made before such Marriage, the same shall be in full force; and the Lands, &c. shall be held and enjoy'd by such Persons, their Heirs, &c. for whom the said Limitation, Devise, or Disposition was made, until such Debt or Portion shall be rais'd and paid. *Ibid.*

Devisees for payment of Debts or Childrens Portions pursuant to a Marriage Agreement excepted.

And wherever an Heir at Law shall be liable to pay the Heir answerable Debt of his Ancestor in regard of any Lands, &c. descending to him, and shall alien the same before any Action or Process commenc'd against him, he shall be answerable Land, as for in an Action of Debt to the Value of the Land so alien'd; his proper in which Cases, Creditors shall be preferr'd as in Actions Debt. against Executors, and Execution shall be taken out against such Heir to the Value of the Land, as if it were his proper Debt, save that Lands, &c. alien'd, *bona fide*, before Action brought, shall not be liable to such Execution. *Ibid.*

Devisee chargeable in like manner. Provided also, that every Devisee made chargeable by this Act, shall be liable and chargeable in the same manner as the Heir at Law in case of Aliening the Lands, &c. devis'd to him before Action brought. *Ibid.*

This Act to continue for three Years.

Made perpetual by 6 & 7 W. 3. cap. 14.

4 & 5 W. & M. cap. 2. Any Person residing, or who shall have Goods or Chattels within the Province of *Tork*, may by his last Will bequeath and dispose of such Goods and Chattels, Debts, or other personal Estate, as he shall think fit. as Persons may in the Province of *Canterbury*. And the Widows and their personal Estates by other Kindred of such Testator shall be barr'd to claim Will in the any part of his personal Estate, other than as is appointed by his last Will. *Stat. 4 & 5 W. & M. cap. 2.*

Tork. Provided, that this Act do not extend to any Citizen Not to extend of *Tork* or *Chester*, but that his Widow and Children may to the Cities enjoy such reasonable part of the Testator's personal Estate of *Tork* and as they might by the Custom of the Province of *Tork* before this Act. *Ibid.*

2 Ann. cap. 5. The said Proviso in the Act of the 4 & 5 W. & M. which Proviso in the prohibits the Citizens of *Tork* disposing of their personal last Act for Estates by Will, is repeal'd, and they are impower'd to dispose of the same, as other Inhabitants within the Province of *Tork* may do. *Stat. 2 Ann. cap. 5.*

2 Ann. cap. 4. A Memorial of all Wills and Devises in Writing, where Wills to be the Devisor or Testatrix shall die after the 29th of September, 1704. whereby any Honours, Lands, Tenements, the West Riding of *Tork* may be any ways affected in Law or Equity, may, at the Election of the Parties concern'd, be Register'd, as *shire*. herein after is directed. And every Devise by Will of such Lands, &c. or any part thereof contain'd in any Memorial so register'd, that shall be made and publish'd after the Registering of such Memorial shall be adjudg'd fraudulent and void, against any subsequent Purchaser or Mortgagee for valuable Consideration, unless a Memorial of such Will be Register'd in such manner as is herein after directed. *Stat. 2 Ann. cap. 4.*

Or deem'd fraudulent.

And every Memorial so to be Enter'd or Register'd, shall be put in Writing in Vellum or Parchment, and directed to the Register of the said Office. And in Case of Wills, the Memorial shall be under the Hand and Seal of some or one of the Devisees, his or their Guardians or Trustees, attested by two Witnesses, one whereof shall be upon his Oath before the said Register, or his Deputy, and prove the Signing and Sealing of such Memorial. *Ib.*

Which Memorial is to be made pursuant to the Directions of the said Act. *Ibid.*

263

A Memorial of all Wills and Devises in Writing made and publish'd where the Devisor or Testatrix shall die after the 29th of September, 1709. of or concerning, and whereby any Honours, Manors, Lands, Tenements, or Hereditaments in the County of *Middlesex*, may be Re-deem'd fraudulent. And every such Devise by Will, shall be adjudg'd fraudulent and void against any subsequent Purchaser or Mortgagee, for a valuable Consideration, unless a Memorial of such Will be Registred, as in this Act is directed.

Stat. 7 Ann. cap. 20.

READINGS.

Before the making of the Statute of *Merton*.
 Sir *Edward Coke* observes it was a Question, Whether

Widow shall
have the Crop
on the Lands
assign'd her
for Dower.

ther Tenant in Dower might devise the Corn which she had sown, or whether he in the Reversion should have it? Some held, that she could not devise it, or if she devis'd it not, that her Executors should not have it, but he in the Reversion; for that her Estate was freely created by Act in Law, and as she, when her Dower was assign'd to her, should have the Land sown or unsown for her Dower, so at the time of her Death he in Reversion should have the Land sown or unsown. And of this Opinion is *Bracton*. 2 *Inst.* 80.

And true it is, that if the Husband sow the Ground, and die, the Property of the Corn is in the Executors, but subject to this Condition, that if the Heir assign unto her the Land sown for her Dower, she shall have the Corn; for she shall be in *de optima possessione viri*, above the Title of the Executor.

But if the Wife be by Custom endow'd *durante Viduitate sua*, and she sow the Ground with Corn, and after take Husband, he in Reversion shall have the Corn, because tho' her Estate was uncertain, yet she hath determin'd it by her own Act.

But the Statute of *Merton* extends not to sown Grass.

Executors must assent to a Legacy.

This Act extendeth not to any thing that groweth spontaneously, or even where the Ground is sown with Hay-Seed, or the like. *Ibid.*

Now if a Man deviseth either by special Name or generally, Goods or Chattels, real or personal, and dieth, the Devisee cannot take them without the Assent of the Executors, but when a Man is seisd of Lands in Fee, and deviseth the same in Fee in Tail for Life or for Years, the Devisee shall enter; for in that Case the Executors have nothing to do with it.

Freehold in the Devisee before Entry.

And in Case of a Devise by Will of Lands, whereof the Devisor is seisd in Fee, the Freehold or Interest in Law is in the Devisee before he doth enter; and in that Case, nothing (having regard to the Estate or Interest devis'd) descendeth to the Heir; but if the Heir of the Devisor entreat, and holdeth the Devisee out, he may either enter, or have his Writ, call'd *ex*

gravi

travi querela; and this Writ (without any particular Usage) is incident to the Custom to devise; for otherwise, if a Descent were cast before the Devisee did enter, the Devisee should have no Remedy. After an actual Possession, this Writ lyeth not; for then the Devisee may have his ordinary Remedy by the Common Law.

1 *Inst.* 111.

Altho' Husband and Wife be deem'd one Person in Law, yet if *Cestuy que use* had devised that his Wife should sell his Lands, and make her Executrix, and died, and she took another Husband, she might sell the Land to her Husband; for she did it in *auter droit*, and her Husband should be in by the Devisor. 1 *Inst.* 112.

But if a Feme Covert be seis'd of Lands in Fee, she cannot devise the same to her Husband, because at the making of her Will she had no Power, being *sub potestate Viri* to devise the same; and the Law intendeth it should be done by Coercion of her Husband. *Ibid.*

If one devise to *I. S.* by his Will all his Lands and Tenements, here not only all those Lands that he hath in Possession do pass, but all those that he hath the Reversion of, by Virtue of those Words Tenements. *Terms of Law. Verb. Devise.*

And if Land be devis'd to a Man to have to him for ever, or to have to him and his Assigns; in these two Cases, the Devisee shall have a Fee-Simple; but if it be given by Feoffment, in such manner he hath but an Estate for term of Life. *Ib.*

And if a Man devise his Land to another to give, sell, or do therewith at his Pleasure or Will, this is Fee-Simple. *Ibid.*

A Devise made to one and to his Heirs Males, doth make an Estate Tail; but if such Words be put in a Deed of Feoffment, it shall be taken a Fee-Simple, because it doth not appear of what Body the Heirs Males shall be begotten. *Ibid.*

The Husband may bind himself by Covenant or Bond to permit his Wife by Will to dispose of Legacies, &c. and this will be such an Appointment as the Husband will be bound to perform.

Cro,

Cro. El. 27. *Cro. Car.* 219, 220, 376, 597. But this is not properly a Will, nor ought to be prov'd in the Spiritual Court. *1 Mod.* 211. But of Things in Action, or of what she hath as Executrix by her Husband's Consent, she may make a Will; and this is properly a Will in Law, and ought to be prov'd in the Spiritual Court. *1 Mod.* 211, 212. If she disposeth of any thing by the Husband's Consent, the Property passes from him to her Legatee, and it is the Gift of the Husband. *1 Mod.* 211. *per Curiam.* If he once assents, he cannot after dissent; and where he is bound by Agreement to let her make a Will, his Consent shall be implied, till the contrary appears. *2 Danv.* 512.

A Feme-Covert Executrix cannot devise any of the Goods which she hath as Executrix, without the Assent of the Husband, or his Agreement after; though she may make an Executor without his Assent. *Mich. 8. Jac. B. Graunt's Case, per Curiam. Ibid.*

So a Feme Covert cannot devise Things in Action which she hath, without the Assent or Agreement of the Husband. *Mich. 8. Jac. B. Graunt's Case, per Curiam.*

Devise of all
his Lands,
what passes.

If one having Lands in Fee, and other Lands for Years, devises all his Lands and Tenements, the Fee Simple Lands only pass. *2 Danv.* 527.

But if a Man hath Leases for Years only, and no Fee-Simple Lands by the devise of all his Lands and Tenements, the Leases for Years pass; for otherways the Will should be merely void. *Ibid.*

Construction
of doubtful
Devises.

If a Man by Will in Writing devises his Lands to his youngest Son and his Heirs, and after marries again, and by another Will in Writing devises the Land to his Wife for Life, paying Yearly to his youngest Son and his Heirs, an Yearly Rent, this is no Revocation of the former Will, but consistent therewith, and may stand with it, as if made in one and the same Writing; and by appointing the Rent to his Son, it appears, that he intended him the Reversion, and that his In-
tention

tion was not to alter his Will, but only to provide for his Wife. *Mich. 41 Eliz. between Ward and Marshal. Cro. Eliz. 721. by An-son and Glanvill.* But the Matter was after decided by Arbitrament.

An Issue being directed to be tried, whether a Will of Lands made by *J. S.* was revok'd or not, the Jury found that he made a later Will in Writing; but say, they do not find that he devis'd any Land thereby. This shall not be taken to be Revocation of the former; for it might notwithstanding what appears, be a Confirmation thereof, and consistent therewith. *Mich. 16. Car. 2. between Seymour and Nosworthy. Hard. 74. adjudg'd.*

If a Man bequeaths a Legacy in these Words, *I give to my Niece A. 500 l. which my Sister B. now hath in her Hands of mine, as by Bond appears;* and after the Money is paid in, and ten Years after Payment thereof the Testator dies, yet the Legacy is good, tho' the Security is alter'd; and by the Words no more is intended, but that the Legacy should be as sure as he could make it. *Mich. 31. Car. 2. Pawlet's Case. Raym. 335. adjudg'd.* And the Difference taken between a Legacy in Numerat, and a Specifick Legacy.

If the Devisor aliens the Land, and Re-purchases, yet the Will is revok'd. *44 Ed. 3. 33. Will revok'd. 44. Aff. D. 3. 4 P. & M. 143. 55. contra 2 R. 3. 3. b. 2 Danv. 530.*

If a Feme-Sole devises her Lands to *J. S.* and his Heirs, and after marries him, by this Marriage the Will is countermanded, for otherwise she could not after Marriage revoke it; for by the Marriage her Will is submitted to her Husband's. *Mich. 30 & 31 Eliz. between Forse and Hembling. 4 Co. 60. adjudg'd.*

In a Will if there be several Devises of one Thing, the last Devise shall take Effect. *Co. Lit. 112. b. stands.*

If *A.* devises Lands to *B.* and his Heirs, and twelve Years after leases the same Lands to *B.* for sixty Years, to commence after his Death, and delivers the Deed to a Stranger to the Use of

Where a later Will does not revoke a former.

By Alienation; Will revok'd.

By Marriage.

Last Devise

Lease to commence after Death, or Revocation.

of *B.* who does not deliver it to *B.* till after the Death of *A.* this is a Revocation of the whole Estate; for both Estates are not consistent, nor can vest in *B.* at the same time. And it was plainly the Intention of the Devisor, that *B.* should have the less Estate only. *Hill. 45 Eliz.* between *Cok* and *Bullock.* *Cro. Jac. 49.* adjudg'd, tho' objected, that it was the Intention of *A.* that *B.* should have his Liberty to take by the Lease, or devise, *B.* not having agreed to the Lease in the Life of *A.*

But if the Lease made to the Devisee had been to begin either in *presenti* or *futuro*, in the Life of the Devisor, it had not been a Revocation; for inasmuch as the Lease might have determin'd in his Life, it was consistent with his Will. *Hill. 45 Eliz. Cro. Jac. 49. per Curiam.*

If one write his Name in the beginning of his Will, it is sufficient, if he don't subscribe it. Sealing, is a signing within the Act.

Where there may be said to be three subscribing Witnesses, and where not.

If a Man writes his Will with his own Hand, tho' he does not subscribe his Name, but Seals and publishes it, and the three Witnesses subscribe their Names in his Presence, it is a good Will; for his Name being wrote in the Will, it is a sufficient Signing; and the Statute does not direct whether it shall be at the Top or Bottom, &c. *Lemayne and Stanley. 3 Levin. 1.* adjudg'd, *per totam Curiam.* And by three Judges against one, the Sealing is a Signing within the Act. And note, it is not said in the Act, that the Signing shall be in the Presence of the three Witnesses. *3 Mod. 219.* But if a Man subscribes and publishes his Will in the Presence of two Witnesses, and they subscribe it in his Presence, and after makes a Codicil in Writing, reciting, that he had made a former Will, and confirm'd the same, (except what was excepted by the Codicil) and declares that the Codicil should be taken as part of his Will, and publishes it in the Presence of one of the same and another Witness, &c. This is not a good Will; for there were not three subscribing Witnesses in the Presence of the Testator, and one of the Witnesses to the Codicil never saw the Will. *Lea and Libb. 3 Mod. 262.* adjudg'd; tho' objected, the Will and Codicil made but

one Will, and the Circumstance of three Witnesses wanting to compleat the Will was perfected by the Codicil. If a Man makes a Will in several pieces of Paper, and there are three Witnesses to the last Paper, and none of them ever saw the first, this is not a good Will.

Witnesses must see every Sheet.

Mod. 263. per Curiam.

Lands in Tail are not deviseable by Will nor Copyhold Lands, unless there be a Surrender to the Use of the Will. *1 Inst. 111, 115.*

Entail'd or Copyhold Lands not deviseable.

The first Grant and the last Will will take place.

Sir Michael Armin being seiz'd in Fee, devis'd a Rent-Charge, and then devises the Land to *A.* for Life, without Impeachment of Waste, and in case he have any Issue Male, then to such Issue Male and his Heirs for ever: And if he die without Issue Male, then to *B.* and his Heirs for ever. *A.* enter'd and suffer'd a common Recovery, and died without Issue. In this Case it was resolv'd, that where the mean Estates limited are for Life or in Tail, the last Remainder may if it be to a Person in *esse* vest, but no Remainder limited after a Limitation in Fee can be vested. That the Recovery suffer'd by *A.* had barr'd the Estate limited to his Issue, that being contingent; and likewise the Remainder limited to *B.* and his Heirs, because that was contingent, not vested, and now never could vest. And that *A.* had gain'd a tortious Fee which would be good against *B.* and his Heirs, and likewise against all Persons but the right Heirs of the Devisor. *Loddington v. Kime, Mich. 6 W. & M. C. B. 1 Salk. 224.*

Devise to *A.* for Life, and if he have Issue Male, to such Issue Male, and his Heirs, and if he die without Issue Male, to *B.* and his Heirs. *A.* has but an Estate for Life, and both Remainders are contingent.

A. being seiz'd in Fee by Indenture, &c. in consideration of Marriage covenanted to levy a Fine to certain Uses, and no Fine was levied, *A.* reciting this Deed, by his Will devises and confirms all Estates given and granted to his Son in Marriage according to the Deed. And it was resolv'd *per Curiam* that the Will had reference to the Deed, and pass'd such Lands and such Estates as were intended to be convey'd by the Deed

Deed and Fine; for the Word *grant* in a Will is not to be taken strictly, but largely, for any Agreement. *Vid. Cro. El. 68. 2 Cro. 148. Milford v. Smith, Mich. 5 W. & M. B. R. 1 Salk. 225.*

Devise of the
Remainder of
a Term held
good.

H. possess'd of a Term for Years, devises his Lands to *A.* and to the Heirs of his Body, and if *A.* die without Issue, living *B.* then to *B.* And the Court held this was a good Limitation to *B.* the Contingency arising within the Compass of a Life. *Lamb v. Archer, 5 W. & M. B. R. 1 Salk. 225.*

Knowling had Issue two Sons, *John* and *Richard*, and devis'd Land to *John* for fifty Years if he should so long live; and as for my Inheritance, after the said Term, I devise the same to the Heirs Male, of the Body of *John*, and for Default of such Issues then to *Richard*. The Court resolved, 1st, That *John* had not an Estate Tail by Implication upon the Words *without Issue*, because the Devisor had given him an Estate for Years by express Words, and the Court cannot make such a Construction against express Words, when thereby they would also drown the Estate for Years, and make an Estate of Inheritance. 2dly, The Court held the Devise to the Heirs Males of the Body of *John* to be void in its Creation, for for want of an Estate of Freehold to support it, it was void as a Remainder; and they seem'd not to think it an executory Devise, because it was limited as a Remainder, and because it is limited *per Verba de presenti*. If one devise his Estate to the Heir of *J. S.* and *J. S.* is living, the Devise shall not be construed an executory Devise, and such a Devise is therefore void; but if it were to the Heir of *J. S.* after the Death of *J. S.* that is good as an executory Devise; so note the Diversity *inter Verba de presenti, & Verba de futuro*. 3dly, The Court held the Limitation to the Heirs Males of *John* was become void by Event, whatever it was in its Creation, because *John* is now dead without Issue. 4thly, The Court held, that if the Remainder to the Heirs Males of *John* was void in point of Limitation,

Limitation
by *Verba de
presenti* does
not make an
executory De-
vise.

mitation, then the next Remainder limited to *Richard* took effect presently. 4 *Mod.* 255. *S. C. Goodwright v. Cornish, Hill.* 5 *W. & M. B. R.* 1 *Salk.* 226.

A Devise to *A.* and *B.* and their Heir, and the longer liver of them, equally to be divided between them, and their Heirs, was held to make a Tenancy in common, *Blisset v. Cranwell, & al. Pasch.* 6 *W. & M. C. B.* *Ibid.*

A Devise of the Rents and Profits of Lands to *A.* to be paid by the Executors was held to be a Devise of the Land it self by the Opinion of *Rokeby* and *Eyre* against *Holt* Chief Justice. *South v. Alleine, Trin.* 7 *W. & M. B. R.* *Ibid.* 228. Devised of the Rents and Profits to be paid by the Executors

Robert Edge devised Lands to Trustees for eleven Years, and then to the first Son of *A.* and the Heirs Males of his Body, and so on to the second, third, &c. Sons in Tail Male, provided they the said Sons shall take on them my Sirname; and in case they, or their Heirs, refuse to take my Sirname, or die without Issue, then I devise my Land to the first Son of *B.* in Tail Male, provided he take my Sirname; and if he refuse, or die without Issue, then to the right Heirs of the Devisor: *A.* had no Son at the time of the Devise, and died without Issue; and *B.* had a Son, who was living at the time of the Devise, who took the Sirname of the Devisor. The whole Court agreed, 1st, That the Devise to the first Son of *A.* was not a contingent Remainder but by way of executory Devise, because the precedent Estate is for Years, which cannot support a Remainder; for a contingent Remainder can never depend on a Term of Years, because of the Abeyance of the Freehold; nor can it be limited after a Fee, because after such a Disposal nothing remains in the Owner to limit, & *per Powell.* A Devise to the first Son of *A.* having none at that time, is void, because 'tis by way of a present Devise, and the Devisee is not in *esse*; but a Devise to the first Son of *A.* when he shall have one, is good, for that is only a future Devise, and no inconvenience, for the Inheritance descends in the mean deem'd a Devise of the Lands. A Devise to the Son of *A.* who has no Son at that time, void. Within what time an executory Devise may arise.

mean time. 2. They held, that an executory Estate to rise within the Compass of a reasonable time is good, that twenty, nay, 30 Years has been thought a reasonable time. So is the Compass of a Life or Lives, for let the Lives be never so many, there must be a Survivor, and so it is but the Length of that Life: But they were not for going one Step farther. *Scatterwood v. Edge, Trin. 9 W. 3. C. B. Ib. 229.*

Three sorts
of executory
Devises.

There are three sorts of executory Estates; one, where the Devisor parts with his whole Fee Simple, but upon some Contingency qualifies that Disposition, and limits another Fee upon that Contingency, which is altogether new in Law, as appears by 1 *Inst.* 18. A Fee cannot be limited upon a Fee. *Vid. 1 Ro. 825, 826. 2 Cro. Pells and Brown.* The second sort is, where he gives a future Estate to arise upon a Contingency, and does not part with the Fee at present, but retains it; these are not against Law, for by Common Law one might devise that his Executor should sell his Land, and in such case the Vendee is in by the Will, and the Fee descends to the Heir in the mean time for this sort. *Vid. 2 Leon. 11. 3 Leon. 67. Cro. Eliz. 833. Mo. 644. 2 Rol. 793. Raym. 82.* A third sort of executory Devises is of Terms which are well settled. In *Matth. Manning's Case, 8 Co. 94.*

Executory
Devise needs
no particular
Estate to sup-
port it.

An executory devise needs no particular Estate to support it, for it shall descend to the Heir till the Contingency happen; 'tis not like a Remainder at the Common Law, which must vest *eo instanti*, that the particular Estate determines; but the learning of executory Devises stands upon the Reasons of the old Law, wherein the Intent of the Devisor is to be observ'd, for when it appears by the Will that he intends not the Devisee to take but *in futuro*, and no Disposition being made thereof in the mean time, it shall then descend to the Heir till the Contingency happen; but if the Intent be that he shall take *praesenti*, and there is no Incapacity in him to do

The Estate
descending
to the Heir
until the Con-
tingency hap-
pen.

it, he shall not take *in futuro* by an executory Devise. 2 *Mod.* 292.

A Devise to an Infant *in Ventre sa mere* is good, and it shall descend to the Heir in the mean time, for the Testator could not intend he should take presently, he must first be *in Rerum Natura*. *Ibid.*

If an Estate be given to *A.* for Life, the Remainder to the right Heirs of *B.* this is a contingent Remainder, and shall be govern'd by the Rules of the Law; for if *B.* die during the Life of *A.* 'tis good, but if he survive 'tis void, because no body can be his right Heir whilst he is living, and there shall be no Descent to the Heir of the Donor in the mean time to support this contingent Remainder, that so when *B.* dies his right Heirs may take. *Ibid.*

An Estate devised to *A.* for Life, Remainder to the Heirs of *B.* the Remainder is not good unless *B.* die in the Life of *A.*

A. possess'd of a Term for ninety nine Years, devis'd his Term to *A.* for Life, and so on to *B.* and five others successively for Life; all seven being now dead, the Question was who should have the Residue of the Term; and it was held, that all the Remainders were good, and that the first Devisee, and so every Devisee in his turn, had the whole Term vested in him; during which the next Man in Remainder, and so every other after him, had not an actual Remainder, but a Possibility of Remainder, and the Executor of the Devisor a Possibility of Reverter: For there may be a Possibility of a Reverter even where no Remainder can be limited, as in the Case of a Gift to *A.* and his Heirs; while such a Tree stands no Remainder can be limited over, and yet clearly the Donor has a Possibility of Reverter, tho' no actual Reversion *a fortiori*; there shall be a Possibility of Reverter where a Remainder may be limited over, for the Testator gave but a limited Estate, and what he has not given away must remain in him, and the Words *for Life* can be no more rejected in the last Limitation than in the first. *Eyres v. Faulkland, Hill. 9 W. 3. C. B. 1 Salk. 231.*

Devise of a Term to several successively for Life: The Executor shall have the Residue

Devise to a young Lady if she married G. and if not, to F. G. refus'd to marry her, and she married C. who brought a Bill to have the Estate, and the Chancery would give no Relief.

But the Estate was afterwards decreed to the Lady and her Husband C. in the House of Lords.

Cary by Will dated the 10th of September, 1685. devised to Trustees, and their Heirs, upon Trust to take the Profits for three Years, and if within the three Years there happen'd a Marriage between the Lord *Guilford* and Mrs. *W.* who was then 10 Years of Age, and his Heir at Law, then to Mrs. *W.* for Life, Remainder to her first Son, &c. And if the Marriage did not happen, then the Remainder to Lord *Falkland* in Tail. They differ'd about the Terms, so the Lord *Guilford* took another Lady, and Mrs. *W.* was married to C. who brought a Bill to have the Estate, as being a Person equivalent, that is to say, equal in Estate, Family, and Person, (as they urg'd) to the Lord *Guilford*; and the Lady an Infant, and in no Fault, she having done what she could, and therefore she ought not to forfeit for the Fault of another; and they produc'd Evidence from Papers, Letters, and Sayings of the Testator to prove his Intent in this Will was not that it should be in the Lord *Guilford's* Power to make her forfeit; & per Cur. these collateral Papers, &c. cannot be taken notice of to influence the Construction of this Will, for that would be to let them in, and to make them part of the Will it self: And by the Statute of Frauds and Perjuries every part of a Will must be in Writing; but before that Statue, where a Will was in Writing, no collateral Proofs by Papers or Words could be admitted, because a Will was a compleat and consummate Act of it self, that therefore they must construe it by it self: That Chancery could not relieve in this Case tho' the Condition was answer'd to what the Lady was capable of doing, for that the Condition was precedent, and tho' Chancery relieves Non-performance, 'tis only upon a Forfeiture for which Equity can have a Valuation made, and give a Compensation: Decreed for the Lord *Falkland*, but revers'd on Appeal to the House of Lords. *Bertie v. Falkland*, Hill. 9 W. 3. in Canc. 1 Salk. 231.

232.

A Devise was in these Words, viz. *I give certain Lands to A. and I give to John Earl of B. my Son-in-Law, 5000 l. and all my Mines, all which I give to my said Son-in-Law, his Executors and Assigns, together with all my Plate and Jewels, and all other my Estate real and personal not otherwise dispos'd by this my Will, for to be given by him to his Children as he shall think convenient, I solely trusting to his Honour and Discretion that he will give them such Provision as will be necessary.* And another Clause was, *Whereas I have contracted for the Sale of my Fee-Farm Rents, my Will is, that if my Debts shall not be satisfied out of my other Estate, my Executors (whereof the Earl was one) shall, and may sell some part, or all of them, for Payment of them, notwithstanding the Rents are not devis'd by this my last Will.* And the Question, Whether his Fee-Farm Rents should pass to the Earl of B. and for what Estate? *Et per Holt Chief Justice, who deliver'd the Resolution of the Court. The Rents pass by these Words, all my real and personal Estate, for the Word Estate is genus generalissimum, and includes all things real and personal; and the Fee of the Rents pass at least the whole Estate of the Devisor, for all his Estate is a Description of his Fee.* *Countess of Bridgwater v. the Duke of Bolton, Hill. 2 Ann. B. R. 1 Salk. 236.*

By the Words,
all my Estate
real and perso-
nal, every
thing passes
the Testator
is interested
in.

H. devised to his Wife all such Sums of Money, Lands, Tenements, and Estate whatsoever whereof at the time of his Decease he should be possess'd. After the making of the Will *H.* purchas'd Lands of the Custom of Gavelkind. And the Question was, Whether these Lands pass'd by the Devise? It was urg'd, that if a Disseisee devises, and after re-enters, the Devise is good, & *hoc fuit Concessum*; because by the Entry he was seiz'd *ab initio*, so as he might bring Trespass. So if one have a Remainder in Fee expectant on an Estate for Life, and devise it, and Tenant for Life dies, the Estate in Possession passes; and this was granted, because the Devisor was seiz'd at

Things personal pass tho' the Testator is not possess'd of them.

But a Devise of Lands is not good if the Testator is not possess'd of them at the time of making the Will.

But they may pass by a Republication.

Devise to two, the Survivor takes all.

Devises to the Heirs of J. S. who was alive, void.

the time of the Will, and his Intent was to pass all. *Sed per Cur.*

1st, A Devise of things personal is good tho' the Testator hath them not at the time of his Will, because they go to the Executors, and the Legacy passes not by the Will, but by the Assent of the Executors, to whom the Will is only directory, so that the Legatee is in by the Executors; but the Court doubted somewhat of a Chattel-real, as a Lease for Years. *Vide Gouldsb. 93.* that it does not pass.

2dly, A Devise of Lands is not good if the Testator had nothing in them at the time of the making his Will, for a Man cannot give that which he has not, and that which was void in its Original can never become good. If an Infant make a Will it is void tho' he come of full Age before he die, so of a Feme Covert. And in these Cases there was only a personal Disability, viz. Infancy and Coverture; so here there is a real Disability by wanting the thing; and the constant Form of Pleading is, that the Testator was seiz'd, and being so seiz'd made his Will. *Co. Ent. 364. Raf. 274.* And there is no difference between a Devise of Lands in Socage and Gavelkind by Custom. *34 H. 6. F. N. B. 199.* Upon which Place note, that they must be *sua* at the time of the Devise.

3dly, Had there been a Republication it was admitted these Lands would have pass'd, for a Republication is as the making a new Will, and the Intent is manifest.

4thly, It was admitted, that if one devise to two, and their Heirs, and one dies *in Vita Testatoris*, the Survivor has all. And that if one has a Manor, and devises it, and after a Tenancy escheat, that shall pass by the Devise, as being part of the Manor. *Bunter v. Coke, Mich. 6 Ann. B. R. 1 Salk. 237, 238.*

Anthony Gull was seiz'd in Fee, and devis'd to his Daughter for Life, after that to *A.* the eldest Son of his Daughter, and his Heirs, and for want of such Heirs, Remainder to the right Heirs

Heirs of J. S. and it was agreed, that J. S. being alive when the Remainder after limited was to commence, that that Remainder was therefore utterly void by this Event, whatever it was in its Creation. 2dly, That the common and legal Construction of Words shall be taken where it does not appear from a necessary or plain Implication that the Intent of the Devisor was otherwise, and therefore that the Limitation to A. and his Heirs, was a Fee-Simple, and not an Estate Tail, for he might mean for want of Heirs general, and there is nothing that plainly shews he meant otherwise, and that by consequence the Remainder to the right Heirs of J. S. was void in its Creation. *Vid. Cro. Car. 57. Cro. Jac. 416. Aumblen v. Jones, Hill. 7 Ann. C. B. 1 Salk. 238.*

The legal Construction of the Words to be taken.

H. seiz'd in Fee, devises to his Wife for her Life, and then to be at her Disposal to any of her Children who shall be then living. H. dies, leaving a Son and a Daughter, and his Wife, who then enters, and marries a second Husband, and the second Husband and she by Lease and Release convey the Lands to A. and his Heirs, to the Use of the Wife for Life without Impeachment of Waste, Remainder to her Daughter, and the Heirs of her Body, Remainder to the Son, and his Heirs, with a Power to revoke and limit new Uses. The first Question was, Whether the Wife had an Estate in Fee, or only an Estate for Life, with a Power to dispose of the Inheritance? And the Court held this to be only an Estate for Life, with a Power to dispose of the Inheritance.

Devise to his Wife for Life, and then to dispose of among her Children. The Wife has but an Estate for Life.

That this differs from the other Cases which are general and indefinite, viz. a Devise to J. S. and that he shall sell, or a Devise to J. S. to sell, &c. In these Cases, because the Party is impower'd to convey a Fee, he is construed to have one, he having no express Estate divided from the Power; but here the Power is a separate Gift distinguish'd from the Estate, and the Estate given is a certain and express Estate. *Vide 10 H. 8. 9. 1 Inst. 9. Mo. 57. 3 Lev. 71. 1 Jones 137. Lat. 9. 34. 2 Lev. 104. 1 Mod. 189. Thomlinson*

But a Devise to J. S. to sell conveys a Fee.

linson v. Dighton, Pasch. 10 Ann. B. R. 1 Salk. 240.

What shall be deem'd an attesting a Will in the Testator's Presence.

Upon a feign'd Issue the Question was, Whether the Will was made according to the Statute of Frauds? For the Testator had desir'd the Witnesses to go into another Room seven Yards distant to attest it, in which there was a Window broken, through which the Testator might see them; & *per Cur.* the Statute requir'd attesting in his Presence to prevent obtruding another Will in place of the true one. It is enough if the Testator might see, it is not necessary that he should actually see them signing, for at that rate if a Man should but turn his Back, or look off, it would vitiate the Will. Here the signing was in the View of the Testator, he might have seen it, and that is enough: So if the Testator being sick, should be in Bed, and the Curtain drawn. *Shires v. Glascock, Pasch. 3 Jac. 2. C. B. 2 Salk. 688.*

Dilapidations.

13 Eliz. c. 10. Ecclesiastical Persons

making over their Effects to prevent their Successors recovering Dilapidations.

The Successor may have his Action against the Alienee.

IF any Archbishop, Bishop, Dean, Archdeacon, Provost, Treasurer, Chaunter, Chancellor, Prebendary, or other Dignitary; or if any Parson, Vicar, or other Incumbent of any Ecclesiastical Living, do make any Deed of Gift, Alienation, or Conveyance of his Goods or Chattels, to the Intent to defeat and defraud their Successors of such Actions and Remedy for Dilapidations as they might otherwise have had for the same, then the Successor may commence his Suit and have such Remedy in any Court Ecclesiastical against him or them to whom such Deed or Deeds of Gift or Alienation shall be so made for the Reparation of so much of the said Dilapidations and Decays, or Recompense for the same, as hath happen'd by his Fact or Default, as he might have had if he or they to whom such Deed or Deeds were made were Executors of him that made such Deed or Gift or Alienation, or were Administrators of his Goods and Chattels. *Stat. 13 Eliz. c. 10.*

Leases by spiritual Persons

And for that unreasonable Leases are the chief cause of Dilapidations, 'tis enacted, that all Leases, Gifts, Grants, Easements,

Feoffments, or Estates, made by the Master and Fellows for more than of any College, Dean and Chapter, Master or Guardian three Lives, of any Hospital, Parson, Vicar, or other, having any and without Spiritual or Ecclesiastical Living, or any Houses, Lands, reserving the Tythes Tenements, or Hereditaments. Parcel of any Col- usual Rent, lege, Cathedral, Church, Chappel, Hospital, Parsonage, void.

Vicarage, or other Spiritual Promotion, to any Person, Bodies Politick or Corporate, other than for twenty one Years, or three Lives, from the time of such Lease or Grant whereupon the accustom'd yearly Rent, or more, shall be reserv'd, shall be utterly void. *Ibid.*

Provided, that this shall not extend to make good any Lease or Grant made by any College, or Collegiate Church for more Years than are limited by the private Statutes. *Ibid.*

No Lease to be made of any Benefice or ecclesiastical 13 Eliz. c. 20. Promotion with Cure or any Part thereof, (not being Lease to be impropriated) shall endure longer than while the Lessor void if the shall be ordinarily resident and serving the Cure without Parson be absence above fourscore Days in any one Year, but every sent eighty such Lease immediately upon such Absence shall be void, Days. and the Incumbent shall lose one Year's Profit of his Benefice, to be distributed by the Ordinary among the Poor of the Parish; and all charging of such Benefices with Cure with any Pension or Profit out of the same, other than Rents to be reserv'd upon Leases made according to this Act, shall be void. Stat. 13 Eliz. c. 20.

Provided, that every Parson allow'd to have two Bene- Pluralist may fices may demise one of them to his Curate only, who demise one to shall serve the Cure; but such Lease shall endure no his Curate longer than during such Curate's Residence without Ab- only. sence above forty Days in any one Year. *Ibid.*

The said Branch of the Statute of 13 Eliz. cap. 10. not 14 Eliz. c. 11. to extend to Leases made by Spiritual Persons of Houses Not to extend in Cities, or Corporate or Market Towns; but the same to Houses in may be granted and demised as formerly, so that such Market House be not the capital or dwelling House of the said Towns except Spiritual Persons, nor have above ten Acres thereto be- Mansion longing. Stat. 14 Eliz. c. 11. House.

And all Sums recover'd for Dilapidations shall within Sums reco- two Years after Receipt thereof be employ'd upon the ver'd for Di- Buildings and Reparations for which the same was paid, lapidations to on pain that the Person receiving thereof forfeit double be laid out in as much as shall not be so employ'd. *Ibid.* two Years.

Provided, that no Lease be made by Force of this Act No Lease in in Reversion, or without the reserving the accustom'd Reversion. Rent, or without charging the Lessee with Repairs, or Or for more for longer Term than forty Years; nor shall any Houses than forty be Years, &c.

Exchanges to be alien'd unless in Recompence thereof good and sufficient Assurance be made in Fee-Simple to such Colleges, Houses, Bodies Politick, and their Successors, of Lands of as good Value. *Ibid.*

18 Eliz. c. 11. All Leases made by any Ecclesiastical, Spiritual, or Lease by Spiritual Persons, or others, of their Ecclesiastical Spiritual Persons, or Collegiate Lands, Tenements, or Hereditaments, whereof any former Lease is in Being, and not to Lease has expire within three Years after the making such new above three Lease, shall be void; and every Bond and Covenant Yearsto come, for renewing or making of any Lease contrary to this void. Act shall be void. *Stat. 18 Eliz. cap. 11.*

Sequestration And after Complaint made to the Ordinary, and Sentence given upon any Offence committed by the Incumbent, whereby he ought to loose one Year's Profit of his where the Incumbent is Benefice, by 13 Eliz. cap. 20. the Ordinary within two non-resident. Months after such Sentence given and Request made by the Churchwardens shall grant the Sequestration to such Inhabitants of the Parish as he shall think fit; and in Default thereof every Parishioner may retain his Tythes, and the Churchwardens may enter and take the Profits of the Glebe, and other Rents and Duties of every such Benefice, to be employ'd to the Use of the Poor as aforesaid until such Sequestration shall be committed by the Ordinary: And then as well the Churchwardens as Parishioners shall make Payment thereof to them to whom such Sequestration shall be committed, who shall employ and bestow the said Profits to such Uses as by the said Statute is appointed, on pain of Forfeiture of double the Value, to be recover'd in the Ecclesiastical Court by the Poor of the said Parish. *Ibid.*

And Parishioner may retain his Tythes till sequester'd.

READINGS.

Dilapidations recoverable either in the Spiritual Court or at Common Law.

If a Parson sue the Executors of his Predecessors in the Spiritual Court for Dilapidations, and the Executors sue for a Prohibition, and a Prohibition is granted, a Consultation shall be awarded. *F. N. B. 51, Watf. Compl. Incumb. 311.* Tho' an Action on the Case might be brought at Common Law by the Successor against the Executors or Administrators of the Dilapidator, and Damages recover'd. But a Curate, though he by License or Agreement receive the Tythes, and have an Allowance for the Repairs of the Parsonage House, &c. yet being but at Will, and not coming

coming in by Institution and Induction, so no Incumbent, his Executors, &c. are not to be sued or charg'd in the Spiritual Court for Dilapidations. 3 *Keb.* 614. *Watsf. Compl. Incumb.* 311.

Trespass for taking and carrying away of four Loads of Wheat and four Loads of Rye, &c.

The Defendants justify, for that the Plaintiff is Rector of the Rectory impropriate of *B.* and that the Chancel was out of Repair, and that the Bishop of *Hereford*, after Monition first given to the Plaintiff, had granted a Sequestration of the Tythes of the Rectory for the repairing of the Chancel, and that the Defendants were Churchwardens of the Parish, and that the Particulars mention'd in the Declaration were Tythes belonging to the Plaintiff as Rector aforesaid, and that by virtue of the said Commission they took the same for repairing of the said Chancel, and that for these Tythes so taken they had accounted to the Bishop.

To this the Plaintiff demurr'd.

The Question was, Whether an impropriate Rectory be chargeable for the Repairs of the Chancel by the Sequestration of the Tythes by the Bishop? And those who argued in the Negative for the Plaintiff could not deny but that Church Reparations did belong to the Ecclesiastical Courts, and that as often as Prohibitions have been pray'd to that Jurisdiction, Consultations have been as often granted: Notwithstanding in many Cases the Rates for such Reparations have been very unequally impos'd; and the Reason is, because those Courts have original Jurisdiction of the Matter.

It was admitted also, that Parishioners are bound to repair the Church, and the Rector the Chancel, and that in respect of their Lands; and therefore if a Man have Lands in one Town, and dwelt in another, he shall be contributory to the Reparation of that Church where the Lands are, and not where he inhabits.

And that all this was by the common Custom of *England* long before the making of the Statute
of

of 31 *H. 8. cap. 13.* by which Parsonages were made Lay Fees; but then it must be understood that this was no real Duty incumbent upon them, but was a personal Burden, for which every Parishioner was chargeable proportionably to the Quantity of Land which he held in the Parish: In which Case, if he refus'd to be contributory, the Ordinary did never intermeddle with the Possessions, but always proceeded by ecclesiastical Censures, as Excommunication of the Party refusing, which is the proper Remedy.

But in case of an Appropriation in the Hands of an Ecclesiastical Corporation, as Dean and Chapter, &c. there, if a Refusal be to contribute to the Repairs, the Ordinary may sequester; and the Reason is, because a Corporation cannot be excommunicated.

But in some Cases the Ordinary could not sequester the Profits belonging to Spiritual Persons tho' he was lawfully entitled to them for a particular Time and Purpose; for by the Statute of 13 *Eliz. cap. 20.* 'tis enacted, that if a Parson make a Lease of his Living for a longer time than he is resident upon it, that such Lease shall be void, and he shall for the same lose one Year's Profits of his Benefice, to be distributed by the Ordinary amongst the Poor of the Parish.

Ordinary
can't sequester
the Lands of
Lay-Men by
his own Au-
thority.

Now he hath no Remedy to recover the Year's Profits but in the Ecclesiastical Court, and he could not sequester, and to give him Authority so to do, a supplemental Statute was made five Years afterwards, in the 18th Year of the Queen's Reign, *cap. 11.* by which Power is given him to grant a Sequestration; so that if he could not sequester in a Case of which he had a Jurisdiction by a precedent Statute *a fortiori*, he cannot in a Case exempted, as this is, from his Jurisdiction.

This Case cannot be distinguish'd from that of *Jefferies* in 5 *Co.* and from what the Civilian testified to the Court there, *viz.* that the Churchwardens and greater part of the Parishioners upon a general Warning given, may make a Taxation by Law, but the same shall not charge

the Land, but the Person in respect of his Land. So that 'tis he that is chargeable, and may be excommunicated in case of Refusal to contribute; but his Lands cannot be sequester'd, because 'tis not the Business of the Ordinary to meddle with the temporal Possessions of Lay-Men, but 'to proceed against them by Ecclesiastical Censures; and the Parishioner's Lands may be as well sequester'd for the Repairs of the Church as the Lands of the Impropiator for the Repairs of the Chancel; for which Reasons it was held, that a Sequestration would not lie.

But may excommunicate in case of Refusal to contribute to Repairs of the Church.

And the whole Court, besides Justice *Atkins*, held, that the Lay Impropiation was not to be sequester'd for the Repairs of the Chancel. The Chief Justice said, that the Repair of the Chancel was an Ecclesiastical Cause, but that the Rectory and Impropiator were Lay, and not to be sequester'd as the Possessions in the Hands of Ecclesiastical Corporations may, which he did agree could not be excommunicated, but the Persons who made up such Corporation might.

Impropiation can't be sequester'd for the Repair of the Chancel.

In *Easter* Term following Judgment was given against the Defendant upon the Point of Pleading, which the Court all agreed to be ill.

1. The Defendant should have averr'd that the Chancel was out of Repair.

2. That no more was taken than what was sufficient for the Repair thereof.

3. For that the Plaintiff had declar'd for the taking of several Sorts of Grain, and the Defendant justifies the taking but of Part, and saith nothing of the Residue, and so 'tis a Discontinuance; and the general Words *quoad residuum Transgressionis* will not help, because he goes to Particulars afterwards, and doth not enumerate all; and thereupon Judgment was given accordingly. 2 *Ventr.* 35. *Walwyn v. Amberry* and others.

2 *Mod.* 254, 255, 256, 257, 258, 259.

If an Incumbent having been admonish'd by his Ordinary to repair the Chancel, or Parsonage or Vicarage House, do neglect to do it, the Bishop may cause the Fruits or Profits of the Living, Incumbent's Profits may be sequester'd for the Repair of the Chancel or

Parsonage
House.

Living, or some part of them (rarely more than a fifth) to be sequester'd, that is, to be receiv'd by some trusty Person, and apply'd by him to the making good the Repairs, he returning the Overplus, if any be, to the Incumbent. See *Const. Ordo de Domib. Eccles.*

Dilapidations
recover'd
which hap-
pen'd in the
Predecessor's
Time only.

It is held, that by the Act of 13 *Eliz. cap. 10.* No Clergyman can sue his Predecessors or his Executors, but only for so much of the Dilapidation as hath happen'd by his Fact or Default.

Deceit.

3 *Ed. 1. c. 29.* IF any Serjeant, Pleader, or other, do any manner of Deceit or Collusion, or consent unto it in Deceit of the Court or of the Party, he shall be imprison'd for a Year and a Day, and plead no more in that Court; and if he be no Pleader, he shall be imprison'd in like manner; and if the Trespass require a greater Punishment, it shall be at the King's Pleasure. *Stat. 3 Ed. 1. cap. 29.*

2 *Ed. 3. c. 17.* A Writ of Deceit shall be maintainable as well in the Where the Case of Garnishment touching Plea of Land, as in Cases Writ is main- of Summons and Plea of Land. *Stat. 2 Ed. 3. c. 17.*
tainable.

READINGS.

Writ of De-
ceit defin'd.

This Writ lieth properly where one Man doth any thing in the Name of another, by which the other Person is dampnified and deceived; then he who is so dampnified shall have his Writ, and the Writ is without the Words *Vi & Armis.* *F. N. B. 95.*

Upon these Words, *Do any manner of Deceit,* Sir Edward Coke observes, there must be a Misfeasance, and not a Nonfeasance only.

Writ recites a
Recovery
where none.

A Writ of *habere facias seisnam* did falsely recite a Recovery in a real Action (where in Truth there was no Recovery at all) by colour of which Writ, a Man was put out of his Freehold; this was a Collusion in Deceit of the Court, and the Delin-

Delinquent was by this Statute awarded to Prison, &c. 2 Inst. 215.

So it is to sue out a *Capias* without an Original.

Also to bring a *Pracipe* against a poor Man, knowing that he hath nothing in the Land of purpose to get the Possession of the Land against the Tenant who is in Possession. *Ibid.*

To procure an Attorney to appear for a Man, Attorney appears without Warrant, is deem'd Deceit. *Ibid.*

If a Serjeant, or an Apprentice of the Law, in pleading a Matter of Fact issuable for his Client, alledge the same to be done at a Town in such a County, where indeed he knoweth there is no such Town, of purpose to delay Justice, and a *engineer la Court*, this is a Deceit within this Statute, and so it hath been holden. *Ibid.*

A. H. in Execution in the Counter of *London*, because that Prison was a strait Prison, devis'd a Shift, (in deceit of the Court) to be remov'd from thence to the *Fleet*, and his device was this; he made an Obligation of 20 *l.* to *S.* and caus'd the Obligation to be put in Suit against himself in the Name of *S.* and Judgment in the Court of Common Pleas was given against him upon his Confession, and procur'd a *Habeas Corpus cum Causa*, and thereupon he was brought into the Court of Common Pleas, and there one in the Name of *S.* pray'd that he might be committed in Execution to the *Fleet*; and the Court being beguill'd, and knowing nothing of this Deceit, and subtile and false Practice, committed him to the *Fleet*; whereas *S.* never had such a Debt, nor ever was privy to any of the said Proceedings.

A. H. and his Counsellors, &c. were held to be within this Statute. *Ibid.*

William de Wasthill, Plaintiff against *Matthew* of the Exchequer, in an Action of Deceit, and declares, that where he had demis'd to the said *Matthew* certain Lands in *Wyrtingscote* in the County of *Worcester*, and *Blagreve* in the County of *Warwick*, for the Term of twelve Years, and covenanted by Fine to assure the same; the said *Matthew* Deceit by fraudulently inserting Lands in a Fine that were not intended to pass.

Matthew other Lands in the said Fine did fraudulently insert, to have and to hold to him in Fee, to the Disherison of the Plaintiff, &c. This Matter was treated of, and examin'd by all the Judges of England, and the Treasurer and Barons of the Exchequer, *Et super Examinationem tam ipsius Matthæi, quam Recordorum compertum est quod hæc & alia perpretravit in deceptionem Curie;* and thereupon Judgment is given *quod committatur gaolee ibidem moratur per unum annum & unum diem secundum Statutum, & finis Cassetur.*
2 Inst. 216.

By a faint Prosecution in the Name of the Party wrong'd.

And if I do present one to a Church whereof I am the Patron, and one *T.* doth disturb me; for which disturbance, another doth purchase a *Quare Impedit* in my Name, Returnable in the Common Pleas against the said *T.* I not knowing thereof; and afterwards causeth the Writ to abate, or me to be Nonsuit in that Writ, I shall have this Writ of Deceit against him who purchas'd that Writ, &c. *F. N. B.* 96.

By forging a Statute.

If one forge a Statute-Merchant in my Name, and sueth a *Capias* thereupon, for which I am arrested; I shall have this Writ of Deceit against him that forg'd it, and against him who sued forth the Writ of *Capias*, &c. *Ibid.*

Attorney making default in a Plea Real.

And if a Man be Attorney for another in a Plea Real against the Demandant, and afterwards by Covin between the Attorney and the Demandant, the Attorney makes Default, by which the Land is lost, the Tenant who lost the Land shall have a Writ of Deceit against the Attorney: *F. N. B.* 96.

Personating Parties to a Suit.

And if an Action of Trespass be brought against many, and the Plaintiff and one *I.* by Covin between them, cause certain Persons to come into Court, and say that they are the same Defendants, and that they make the said *I.* their Attorney, and afterwards the said *I.* as Attorney for the Defendants, pleadeth unto Issue, and afterwards suffer the Inquest to pass by Default, by which the Plaintiff doth recover against the Defendants; now those who are the true Defendants,

dants, shall have a Writ of Deceit against *I.* who appear'd as Attorney for them, &c. *Ibid.*

In a *Precipe quod reddat*, if the Sheriff return Default of Summons in a *Precipe*. the Tenant summon'd where he was not summon'd, by which the Defendant loseth his Land by Default at the grand *Cape* return'd; the Tenant shall have a Writ of Deceit against him who recover'd, and against the Sheriff for his false Return; and by that Writ the Tenant shall be restor'd unto his Land again. And it seemeth the Tenant shall have this Writ after Judgment given for the Demandant, against him that recover'd before any Entry or Possession. *F. N. B.*

97.

And so if a Man sue a *Scire facias* upon a Recognizance of Debt, and the Sheriff return the Defendant summon'd, where he is not summon'd, for which the Plaintiff hath Execution awarded, the Defendant shall have a Writ of Deceit against him who had Execution, and the Sheriff shall be punish'd by this Writ for his falsity; and the Party who recover'd shall make Restitution of that he recover'd, &c. *F. N. B.* 97.

If Husband and Wife lose the Land of the Wife by default, they may sue a Writ of Deceit; and if the Husband dieth, it seemeth the Wife may sue a Writ of Deceit to be restor'd to her Land, &c. or have a *Cui in Vita* upon the Staute at her Election; and the Writ of Deceit shall be directed unto the same Sheriff who did the Deceit and false Return, and not unto the Coroners; as appeareth *Trin. 20. E. 3.* Yet it seemeth it is not Error, if it be directed unto the Coroners. *Ibid.* 98.

And a Writ of Deceit lieth against him who embezilleth a Writ, and also against him who procureth another to embezel a Writ, if it be embezel'd, &c. *Ibid.*

And if a Man doth bargain with another to Enfeoff him of certain Lands, and afterwards he Enfeoffeth another Man, he with whom he made the Bargain, shall have a Writ of Deceit.

If

Executors.

If an Action of Debt be brought against two as Executors, where one of them is not Executor; if he who is not Executor confess the Action, he who is Executor shall have Deceit against him, and recover as much in Damages. *Ibid.*

Deceit on a Warranty.

If a Man sell Cloths, and warrant them to be of a certain length, if they be not of such length, he who bought them shall have a Writ of Deceit against him upon his Warranty, although the Warranty be only by Word; but if the Warranty be made at another Time after the Bargain made, then it ought to be in writing, otherwise he shall not have an Action upon that Warranty; for he shall not have Action of Deceit therefore, if the Warranty be not made upon the Bargain, and at the Time of the Bargain. *Ibid.*

To be brought in the County.

The Writ of Deceit ought to be brought in the County where the Deceit is suppos'd to be done. *Ibid.*

Procuring one to be sued.

If a Man procure another to sue an Action against me to trouble me, I shall have a Writ of Deceit. *Ibid.*

The Courts from whence the Writ issues.

And this Writ of Deceit shall sometimes issue out of the Common Pleas, or he may sue it out of the Chancery if he will. As if a Man lose Lands by Default in a *præcipe quod reddat* in the Common Pleas; the Tenant, if he were not summon'd, shall have a Writ of Deceit out of the Common Pleas if he will, or out of the Chancery. *Ibid.* 99.

Counterfeiting a Person's Seal.

If a Notary or other Person of Covin, counterfeit the Seal of any Parson or Vicar, and forge Letters of Resignation of his Parsonage or Vicarage in the Name of the Parson or Vicar of his Benefice, he shall thereupon have a Writ of Deceit, and the Writ is in the Register; but whether by that he shall be restor'd unto his Benefice. *Quare*, it seemeth not; because the removing of him is a Spiritual Act. *Ibid.*

Descent

Descent and Disseisin.

W Hereas divers Persons have by Force without Title 32 H. 8. c. 33.
 enter'd into Lands, &c. and wrongfully disseis'd The dying
 the right Owners, and have thereof dy'd seis'd, whereby seis'd of a
 the Disseisee, or the Persons who before such Descent might Disseisor shall
 have lawfully enter'd, are thereby excluded their Entry, not be deem'd
 and put to their Action for recovery of their Lands: a Descent in
 'Tis hereby Enacted, That the dying seis'd of any such Law to take
 Disseisor of or in any Lands, &c. having no Right or away an En-
 Title therein, shall not be deem'd any descent in Law to try.
 toll or take away the Entry of any Person, or his Heirs,
 who at the time of the same Descent had lawful Title of
 Entry into the said Lands, &c. except such Disseisor hath
 had peaceable Possession of such Lands, &c. whereof he Except he
 shall so die seis'd, for five Years after the Disseisin by him hath had five
 committed, without Entry or continual Claim by such Years quiet
 Person as hath lawful Title thereto. Stat. 32 H. 8. Possession
 cap. 33. without En-
 try or Claim.

READINGS.

Disseisin is where a Man enters into any Lands or Tenements where his Entry is not lawful, and putteth him out that hath the Freehold. And he which so putteth a Man out of his Land without Order of Law, is call'd a Disseisor; and he that is so put out, the Disseisee. *Terms of Law. Verb. Disseisin.*

And if such Disseisee levy a Fine of the Land whereof he is disseis'd, to a Stranger, the Disseisor shall keep the Land for ever; for the Disseisee against his own Fine cannot claim, and the Conusee cannot enter, for the Right which the Disseisee had, was extinct by the Fine, whereof the Disseisor shall take advantage. And so was the Opinion. *Cok. lib. 2. S. 56. Ibid.*

The word Descent in a legal Acceptation is, Descent de-
 where Lands, &c. after the Death of the Ance- fin'd.
 stor are cast by course of Law upon the Heir;
 but the Civilians call him Heir *qui ex testamento*
succedit in universum jus Testatoris. 1 Inst. 237.

At common Law, if the Disseisor, Abator or
 VOL. II. U Intru-

Intruder had died seis'd soon after the Wrong done, the Disseisee and his Heirs had been barr'd of his and their Entry without any time limited by Law. And it is said, that Abators and Intruders are out of this Statute, because the Statute is penal, and extends only to a Disseisor, which was the most common Mischief. 1 *Inst.* 238.

Feoffee of a
Disseisor not
within the
Statute.

The Feoffee of a Disseisor is out of the said Statute, and remains as at the Common Law; but as to the Disseisor, the Statute is taken favourably for the Advancement of the antient Right; for whether the Disseisin be without Force or with Force, it is within the Statute. And albeit the Statute speak of him, that at the time of such descent had Title of Entry, &c. or his Heirs; yet the Successors of Bodies Politick or Corporate, so you hold your self to a Disseisin, are within the Remedy of this Statute, for the Statute extendeth clearly to the Predecessor being disseis'd, and consequently without naming of his Successor, extendeth to him; for he is the Person that at the time of such descent had Title of Entry. *Ibid.*

Where the En-
try of the
Disseisee is
taken away.

But if a Man make a Lease for Life, and the Lessee for Life is disseis'd, and the Disseisor die seis'd within five Years, the Lessee for Life may enter; but if he die before he doth enter, it is said that the Entry of him in the Reversion is not lawful, because his Entry was not lawful upon the Disseisor at the time of the descent, as the Statute speaketh. But if Lessee for Life had died first, and then the Disseisor had died seis'd, he in the Reversion had been within the Remedy of the Statute, because he had Title of Entry at the time of the descent, as the Statute speaketh, and so within the express Letter of the Statute, albeit the disseisin was not immediate to him, and the like is to be said of Remainder, &c. *Id.*

The Entry of
the Disseisee
reviv'd.

If a Disseisor make a Gift in Tail, and the Donee hath issue, and die seis'd, now is the Entry of the Disseisee taken away: but if the Issue die without Issue, so as the Estate-Tail which descended, is spent, the Entry of the Disseisee is
reviv'd.

reviv'd, and he may enter upon him in the Reversion or Remainder. *Ibid.*

So if there be Grandfather, Father, and Son, and the Son disseis'd one, and infeoffeth the Grandfather, who dieth seis'd, and the Land descendeth to the Father, now is the Entry of the Disseisee taken away; but if the Father dieth seis'd, and the Land descendeth to the Son, now is the Entry of the Disseisee reviv'd, and he may enter upon the Son, who shall take no advantage of the descent, because he did the Wrong unto the Disseisee. *Ibid.*

A Writ of Entry *Sur Disseisin* lieth only upon The several a disseisin made to the Demandant, or some of his Kinds of Ancestors, and of this Writ there be four Kinds. Writs of Entry. The First is a Writ that lieth for the Disseisee against the Disseisor upon a Disseisin done by himself; and this is call'd a Writ of Entry in the nature of an Assize. The Second is a Writ of Entry *sur disseisin en le per*; for the Heir by descent is in the *Per* by his Ancestor; so it is if the Disseisor make a Feoffment in Fee, a Gift in Tail, or a Lease for Life; for they are in the *Per* by the Disseisor. The Third is a Writ of Entry *sur disseisin en le Per & Cui*; as where *A.* being the Feoffee of *D.* the Disseisor maketh a Feoffment over to *B.* there the Disseisee shall have a Writ of Entry *sur disseisin* of Lands, &c. in which *B.* had no Entry but by *A.* to whom *D.* demis'd the same, who unjustly and without Judgment disseis'd the Demandant. The Fourth is a Writ of Entry *sur disseisin in le Post*, which lieth when after a disseisin the Land is remov'd from Hand to Hand beyond the Degrees; and it is call'd *in le Post*, because the Words of the Writ be *post disseisinam quam D. injuste, &c. fecit, &c.* *Ibid.*

These Degrees are of two sorts, either by Act What work-
Law, as in case of a descent; or by Act of the eth a Degree.
Party by lawful Conveyance, and by the Com-
mon Law, if the Lands were convey'd out of
the Degrees, the Demandant was driven to his
Writ of Right in respect of such long Possession
so many different Hands, which the Law does

Writ of Entry in *le post* given.

ever favour; and therefore by the Statute of *Marlbridge*, the Writ of Entry in *le post* is given. But no Estate gain'd by Wrong doth make a Degree, and therefore neither Abatement, Intrusion. or Disseisin upon a Disseisin doth make a Degree, neither doth every change by lawful Title work a Degree; as if a Bishop or Abbot, or the like, do seise one, and die; for tho the Person be alter'd, yet the Right remaineth where it was, viz. in the Church. *Ibid.* 239.

Also an Estate made to the King doth make no Degree. *Ibid.* 239.

Also an Estate of a Tenant by the Courtesy, or of the Lord by Escheat, or of an Execution of an Use by the Statute of 27 *H. 8.* or by Judgment, or Recovery, or of any others that come in the *Post*, work no Degree, but a Tenancy in Dower by assignment of the Heir, doth work a Degree, because she is in by her Husband; but Assignment of Dower by a Disseisor, worketh no Degree, but is in the *Post*. *Ibid.*

If the Disseisor make a Lease for Life, the Remainder in Fee, Tenant for Life dieth, he in the Remainder is in the *per*, because he now claimeth immediately from the Disseisor; and both these Estates make but one Degree. *Ibid.*

Where an Entry on Tenant for Life shall divest the Reversion.

Albeit the Disseisor after a Descent taketh to him but an Estate for Life, yet when the Disseisee doth enter upon him, he shall thereby divest the Reversion; for the Estate of Freehold is that whereupon a *Præcipe* doth lie; and therefore the Entry of the Disseisee is as available in Law, as if he had recover'd it in a *Præcipe*. And so it is if a Disseisor make a Lease for Life, and grant the Reversion to the King, the Entry of the Disseisee upon the Tenant for Life shall divest the Reversion out of the King in the same manner as if the Disseisee had recover'd the Lands against the Tenant for Life in a *Præcipe*. *Ib.* 241.

Where the eldest Son may enter upon the Issue of the Younger after a Descent.

If a Man seise'd of certain Lands in Fee, have Issue two Sons, and die seise'd, and the younger Son enter by Abatement into the Land, and hath Issue, and dieth seise'd thereof, and the Land de-

scend to his Issue, and the Issue enters into the Lands, in this Case the eldest Son, or his Heir, may enter by the Law upon the Issue of the Younger Son, notwithstanding the Descent ; because that when the younger Son abated into the Land after the Death of his Father, before any Entry made by the eldest Son, the Law intends that he entred claiming as Heir to his Father ; and for that the eldest Son that claims by the same Title (that is to say) as Heir to his Father, he and his Heirs may enter upon the Issue of the younger Son, notwithstanding the Descent, &c. because they claim by the same Title. And in the same manner it shall be, if there were more Descents from one Issue to another Issue of the youngest Son. *Lit. Sect.* 396, 397. *1 Inst.* 242.

But if the youngest Son make a Feoffment in Fee, and the Feoffee die seis'd, that Descent shall take away the Entry of the Eldest, in respect that the Privy of the Blood faileth. *Ibid.*

And if the eldest Son entreth, and gaineth an actual Possession and Seisin, then the Entry of the Youngest is a Disseisin ; and then a dying seis'd shall take away the Entry of the Eldest. *Ibid.*

If a Feme-Sole be seis'd of Lands in Fee, and is disseis'd, and then taketh Husband ; in this Case, the Husband and Wife as in the Right of the Wife, have Right to enter ; and yet the dying seis'd of the Disseisor in that Case shall take away the Entry of the Wife after the Death of her Husband ; and the Reason is as well for that she herself when she was sole might have enter'd, and recontinued the Possession : As also it shall be accounted her Folly that she would take such a Husband which would not enter before the Descent. *Ibid.* 246.

A Descent shall not take away the Entry of a Lessee for Years, nor of a Tenant by *Elegit*, or not take a Tenant by Statute-Merchant, or such like as have way the Entry but a Chattel and no Freehold ; and the Reason is for that by their Entry upon the Heir by Descent they take no Freehold from him, but otherwise it is of an Estate for Life, or any higher Estate.

state. And as a Descent of a Freehold and Inheritance shall take away the Entry of him that Right hath to a Freehold or Inheritance, so a Descent of a Freehold and Inheritance cannot take away the Entry of him that hath but a Chattel, for that no Descent, or dying seis'd, can be of the same. *Ibid.* 249.

Usurpation
of a Turn to
Present does
not put the
Grantee out
of Possession.

A Man seis'd of an Advowson in Fee, grants three Avoidances one after another, and after the Church becometh void, and the Grantor presents, and his Clerk is admitted and instituted, and after the Church becomes void again; the Grantee may present to the second Avoidance, for that he was not put out of the Possession thereof; for as the Lessor having the Freehold and Inheritance, cannot disseise his Lessee for Years, having but a Chattel that any descent may be cast to take away his Entry; so in the said Case the Grantor hath frank Tenement and Fee of the Advowson rightfully, so as he cannot make any Usurpation to gain any Estate, or to put the Grantee so out of Possession as that he should not present no more than the Lessee for Years in this Case to Enter. Also in respect of the Privy that is between them, the Usurpation of the Grantor shall not put the Grantee out of the Possession for the two latter Avoidances. And this was resolv'd by all the Judges of the Court of Common Pleas. *Ibid.*

Heir in by
Descent, not-
withstanding
a Devise.

If a Man devises Lands to one that is his Heir, this is void, and it shall operate by Descent. *Hobart's Reports*, 29. *Cowden's Case*. For where there is not any Alteration of the Estate by the Devise of the Estate which the Law gives to him, he shall be in by descent; which by Intendment is more for his Advantage, as to take away an Entry, and for a Warranty, and is the more ancient Title.

But a Limita-
tion by way
of Use, is good.

But if a Man makes a Feoffment in Fee to the Use of himself for Life, the Remainder to the Use of the Heirs Males of his Body, this is a good Estate Tail executed in himself, and the Limitation good by way of Use, because rais'd out of the Estate of the Feoffees, which the Fe.

offor

offor departed with. *Co. Lit.* 22. *b.* So if he covenants to stand seisd to the Use of the Heirs Male of his own Body by a second Wife, for he took an Estate himself by implication. *Pybus & Mitford*, 1 *Vent.* 372. 2. *Lev.* 75. *Raym.* 228. 1. *Mod.* 121. 159. 2 *Danv.* 556.

If *A.* being Tenant in Tail hath Issue two Sons, and the Eldest having Issue a Daughter, dies, leaving his Wife *previent enseint* of a Son; and after *A.* covenants to suffer a Recovery to the Use of himself for Life, the Remainder to *C.* and *D.* for twenty four Years; the Remainder to the Heirs Males of the Body of *A.* and dies at five in the Morning, and the Recovery passes the same Day, and an *Hibere facias seisenam* is immediately awarded, and in a few Days after executed, and the youngest Son enters; and after the Wife of the Eldest is deliver'd of a Son, he may enter upon the Youngest; for the Youngest taking what his Ancestor would have done if he had liv'd, he shall take it by descent, and not by purchase. *Trin.* 23 *Eliz.* *Shelly's Case.* 1 *Co.* 93, 94, &c. adjudg'd 98 Several Cases put upon the same Reason. 2 *Danv.* 557.

Where one shall take by Descent, and not by Purchase.

If a Man leases for Life rendring Rent, and dies, having Issue two Sons by several Venters, and the eldest Son dies before the Rent-day, the second Son shall have it as Heir to his Father, because the Eldest had not the actual Possession. 35 *Aff.* 2. 2 *Danv.* 559.

Youngest Son by a second Venter shall Inherit where the Eldest had not seisin.

If there be a Gift to the Baron and Feme in Special Tail, the Remainder to the Right Heirs of the Baron, and they have Issue; and the Feme dies, and the Baron takes another Feme, and hath Issue, and dies, and the eldest Son enters, and dies without Issue, the second Son of the half Blood shall have the Remainder; because the Eldest was not seisd thereof in his Demesne. 37 *Aff.* 14. adjudg'd; but there the Reason is given, because the Remainder did not commence till after the Gift. 24 *Ed.* 3. 30. *b.* *Ibid.*

Or where there is a Gift in special Tail.

If Land be given to *I.* for Life, the Remainder to *R.* his Son, in Tail, the Remainder to the

Right Heirs of *I.* and *I.* dies, and *R.* enters as Tenant in Tail, and dies without Issue; *T.* the Son and Heir of *I.* of the half Blood to *R.* shall have the Land by descent, and not the Heirs of *R.* because *R.* was never seised of the Fee in demesne. 39 *Ed.* 3. *Descent* 5. *Ibid.*

Advowson.

If two Daughters by several Venters make Partition of an Advowson in Gros to present by Turns, and after one dies without Issue before any Presentation, the other shall have the Advowson, because there was no seisin thereof. *Fitz. Natura.* 34 *E.* *Ibid.* 560.

But otherwise it would have been, if she that had died, had presented after the Partition. *Fitz. Nat.* 34 *E.* *Ibid.*

If a Man recovers Land, and after a Stranger to the Recovery dies seised, yet this shall not take away the Entry of the Recoveror, because it was but a Title; and the Title relates to execute the Recovery of the Judgment. *Ibid.* 561.

If a Man recovers against another, and enters, and sues Execution, and after the Recoveree disseises him, and dies seised, this Descent shall take away the Entry of the Recoveror; for the Recovery was executed, and cannot be return'd again; and this is a puisne Title. 3 *E.* 4. 7. *Contra* 10. *H.* 7. 5. *b. quare.* 7 *H.* 7. 15. 5 *H.* 7. 31. *b.* 2 *Danv.* 561.

If after Recovery against Tenant for Life, he dies, and he in Remainder enters before Execution, and dies seised, the Entry of the Recoveror is not taken away, because he is Privy in Estate. *Co. Lit.* 238. *a.* *Ibid.*

If *A.* infeoffs *B.* upon condition, and *B.* is disseised, and the Disseisor dies seised, and the Condition is broke either before or after the Descent, the Entry of *A.* is not taken away, for the Estate is subject to the Condition into whose Hands soever it comes. *Lit. Sect.* 391, 392. The Title of Entry in the Feoffor or Donor that hath but a Condition, cannot be taken away by any Descent, because he has no Remedy by Action to recover the Land; and if a Descent should take away his Entry.

Title in Feoffor or Donor that hath but a Condition, can't be taken away by Descent.

Entry, it should bar him forever. *Co. Lit.* 240.

a. And the Condition remains in the same Essence it was at the time of the Creation, and cannot be divested and put out of Possession as Lands, &c. 240 b. *Ibid.* 564.

So he that has Title to enter upon a Mortmain, shall not be barr'd by a Descent, because then he should be without Remedy. *Co. Lit.* 240. b. *Ib.*

And if *A.* devises Lands to *B.* and dies, and the Heir of *A.* enters, and dies seisd before any Entry of De-
try made by *B.* this descent shall not take away visee not taken
the Entry of *B.* for if it should take away his away by the
Entry, it should bar him of his Right, and leave Heirs dying
him utterly without Remedy. *Co. Lit.* 240. b. seisd.
Ibid.

Wherever there is a lawful Demand of a Rent, What is a De-
and the same is not paid, whether the Tenant be nial and a
present or absent, this is a Denial in Law, and Disseisin of
such a Denial is a Disseisin of a Rent-Charge as well Rent in Law.
as of a Rent-Seck; but the Demand must be made
upon the Land. 1 *Inst.* 153, 161.

If there be two Joint-Tenants, and the Grantee of a Rent-Charge distrain for the Rent, and one of them make a Rescous, they are both Disseisors; for a Distress for the Rent is a Demand in Law, and then the Non-payment is a Denial and a Disseisin; but he that made the Rescous is only the Disseisor with Force. 1 *Inst.* 161.

If *I.* have a Rent-Charge issuing out of Land of which there are several Ter-Tenants, a Demand upon the Land in the Possession of one of the Tenants, and Non-payment, is a Disseisin by all, for all the Rent issues out of every part. 39 *Aff.* 4. admitted by the Judge: 2 *Danv.* 623.

There be three Causes of a Disseisin of a Rent-Service, viz. Rescous, Replevin, and Inclosure. *Lit. Sect.* 237. And there be four Causes of the Disseisin of a Rent-Charge, viz. Rescous, Replevin, Inclosure, and Denial. *Lit. Sect.* 238. To which may be added, Resistance to distrain, Counter-pleading, vouching a Record, and failure thereof. *Co. Lit.* 161. b. And there are two Causes of a Disseisin of a Rent-Seck, Denial and Inclosure.

sure. *Lit. Sect.* 239. The Reason why Inclosure is a Disseisin of a Rent-Seck is, because the Grantee cannot come upon the Land to demand it. *1 Inst.* 161. *b.*

Threatning
the Lord coming to
distrain, a Dis-
seisin.

And it seemeth that there is another Cause of Disseisin of all the three Services aforesaid, that is, If the Lord is going to the Land holden of him, for to distrain for the Rent behind, and the Tenant hearing this, encountreth with him and forestalleth him the Way with Force and Arms, or menaceth him in such Form that he dare not come to the Land to distrain for his Rent behind for doubt of Death or bodily hurt, this is a Disseisin; for that the Lord is disturb'd of the mean whereby he ought to come for his Rent. And so it is, if by such Forestalling or Menacing, he that hath Rent-Charge or Rent-Seck is forestalled, or dare not come to the Land to ask the Rent behind, &c. *1 Inst. Sect.* 240.

If a Man distrains for a Rent Service, and a Stranger rescues the Distress in the Name of the Tenant, this is a Disseisin of the Rent. *56 H. 3. Itinere, Stafford, 16 per Curiam. 2 Danv.* 624.

If Lessee for Years is ousted by his Lessor, this is no Disseisin; yet the Estate of the Lessee is turn'd into a Right not grantable. *Hob.* 322. & *Cro. Jac.* 678.

If a Man hath an House, and locks it and departs, and another comes to his House and takes the Key of the Door into his Hand, and says that he claims the House to himself in Fee, without any Entry into the House; this is a Disseisin of the House. *P. 15. Jac. B. Plot's Case.* Admitted clearly upon Evidence at the Bar in an Assize taken by Default. *2 Danv.* 624.

If a Man that has Right to enter into Lands, in coming towards the Land is disturb'd from Entering, this is a Disseisin. *26 Ass.* 17.

If Lessee for Years holds over his Term, yet he is not any Disseisor, because he comes in by the Act of the Party; but he is call'd a Tenant at Sufferance. *tempore H. 8. S.* 356. *9 H. 7. 24 per Curiam Dubitatur. 22 Ed. 4.* 38. *b.*

A Feme-Covert shall not be a Disseisors by the Act of the Baron. 7 *Ed.* 4. 7. *b.* 12 *Ed.* 4. 9. *b.* But a Feme-Covert may be a Disseisors by her actual Entry, or proper Act. *Co. Lit.* 357. *b.* tho' her Husband is present. *Co. Lit.* 357. *b.* *Ib.*

Feme-Covert
Disseisors.

If a Man be disseis'd who hath a Son within Age, and dieth; and the Son being within Age, the Disseisor dieth seis'd, and the Land descend to his Heir, and a Stranger Abate, and after the Son of the Disseisee, when he cometh to his full Age, releaseth all his Right to the Abator: In this Case the Heir of the Disseisor shall not have an Assize of Mortdanasfor against the Abator, but shall be barr'd; because the Abator hath the Right of the Son of the Disseisee by his Release; and the Entry of the Son was congeable, for that he was within Age at the time of the Descent, &c. *Lit. Sect.* 475.

The difference between Disseisin, Abatement, Intrusion, Deforcement, Usurpation, and Purpresture, is this: A Disseisin is a wrongful putting out of him that is actually seis'd of a Freehold. 1 *Inst.* 277.

Disseisin.

An Abatement is, When a Man died seis'd of an Estate of Inheritance, and between the Death and the Entry of the Heir, an Estranger doth interpose himself and Abate. *Ibid.*

Abatement.

Intrusion is properly when the Ancestor died seis'd of any Estate of Inheritance expectant upon an Estate for Life, and then Tenant for Life dieth, and between the Death and the Entry of the Heir, an Estranger doth interpose himself and intrude. *Ib.*

Intrusion.

And he that entreth upon any of the King's Demesnes, and taketh the Profits, is also said to intrude upon the King's Possession. *Ibid.*

Deforcement comprehendeth not only these asorenam'd; but any Man that holdeth Land whereunto another Man hath Right, be it by Descent or Purchase, is said to be a Deforceor.

Deforcement.

Usurpation hath two Significations in the Common Law; one, when an Estranger that no Right hath, presenteth to a Church, and his Clerk is admitted and instituted, he is said to be an Usurper,

Usurpation.

surper, and the wrongful Act that he hath done, is call'd an Usurpation. *Ibid.*

Secondly, When any Subject doth use without lawful Warrant, Royal Franchises: he is said to Usurp upon the King those Franchises. *Ibid.*

Purpresture.

Purpresture is properly when there is a House builded, or an Inclosure made of any part of the King's Demesns, or of an Highway, or a common Street, or publick Water, or such like publick Things. It is deriv'd of the *French* Word *Pourpris*, which signifieth an Inclosure, but specially applied as is aforesaid by the Common Law. *Ibid.*

**Disseisin or
not at the E-
lection of the
Disseisee.**

Where one disseises me of part of an House, and I am in possession of the Rest, it is at my Election whether I will admit my self out of Possession of the House or not. *Styl.* 341. *2 Dav.* 628.

If Lessee at Will makes a Lease for Years, this is a Disseisin at the Election of the Lessor at Will that hath the Fee; for if he disposes of the Land as if no Disseisin had been, then it is no Disseisin. *P. 9 Car. B. R.* between *Blunden* and *Baugh*, adjudg'd in a Writ of Error *per Curiam*, contra *Richardson*, and the Judgment given to the contrary in *Banc* by the Court against *Harvey*; revers'd accordingly. *Intratur Hill.* 7 *Car. B. R. Rot.* 1106.

If a Man enters into the Land of an Infant by his Assent, this is a Disseisin to the Infant at his Election; for the Infant cannot prejudice himself by his Assent. 11 *Ed.* 3. *Aff.* 87. adjudg'd.

If a Man enters into my Lands claiming a Lease for Years, he is a Disseisor. 9 *H.* 6. 21, 31. *b.* 28. 630.

So if a Man enters claiming as a Guardian where he is not Guardian, he is a Disseisor. 9 *H.* 6. 31. *b.* 28 *Aff.* 11. adjudg'd. *Ibid.*

So if a Man enters into Land claiming as Tenant by Statute-Merchant when he has no Right, &c. he is a Disseisor. 24 *Ed.* 3. 31. adjudg'd.

He who commands a Disseisin, is a Disseisor.

If a Man commands *J. S.* to disseise *J. D.*, and he does it accordingly, the Commander is a Disseisor as well as *J. S.* 22 *Aff.* 99.

If Tenant at Will or Sufferance makes a Lease for Years, the Lessee at Will and Tenant at Sufferance

ferance are the Disseisors, and not the Lessee for Years. 12 Ed. 4. 12. b. by all the Justices.

If a Man holds of me 20 s. Rent, and disseises me of 10 s. thereof; this is a Disseisin of the Whole. 22 H. 6. 10. b.

Discontinuance of Process.

BY the Death and Demise of the King, no Action, 1 Ed. 6. c. 7. Bill, or Plaint, depending between Party and Party, No Action shall be discontinued, or put without Day; but the Pro- discontinued cess, Pleas, Demurrs, and Continuances, and every Acti- by the Demise on, Suit, Bill, or Plaint, shall stand and be prosecuted in of the King. such manner as if the King had liv'd; neither shall the Variance between the original and judicial Process in respect of the King's Name, be material, Stat. 1 Ed. 6. cap. 7.

And no Assize of Novel Disseisin, Assize of Mortdancer, *Juris Utrum*, or Attaint, shall be discontinued by the Death, New Commission, Association, or not coming of the same Justices of Assize, or any of them. *Ibid.* Or by the Death or Removal of the Justices.

And if any Demandant or Plaintiff shall be made a Duke, Archbishop, Marquess, Earl, Viscount, Baron, Bishop, Knight, Justice of one Bench or the other, or Sergeant at Law, depending the Action; no Writ, Action or Suit shall Abate for such Cause. Or by the Preferment of the Demandant or Plaintiff.

Commissions of Justices to continue, notwithstanding their being prefer'd to the Honours aforesaid. Or Preferment of Justices.

And where any Person shall be found guilty of Treason, Murder, or Felony, and shall be repriev'd without Judgment given against him, future Justices of Goal-delivery where such Person found Guilty shall remain, shall have Power to give Judgment of Death against such Person, as the Justices before whom such Person was convicted, might have done. *Ibid.* Justices may give Judgment who did not convict the Prisoner.

And no Process or Suit before Justices of Assize, Goal-delivery, Oyer and Terminer, Justices of Peace, or other the King's Commissioners, shall be discontinued by the making any new Commission or Association, or by altering the Names of the said Justices, or other Commissioners. *Ibid.* Process not discontinued by new Commission, or altering the Commission.

Upon the Death of any King, all Pleas to Informations in B. R. shall stand and be good in Law, without calling Defendants to plead again, unless the Defendants desire soto do, and request the Court for that purpose within 4 & 5 W. 3. M. c. 18.

within five Months after such demise. *Stat. 4 & 5 W. 4. M. cap. 11.*

1 Ann. c. 8.

No Writ, Plea, or Process upon any Indictment or Information for any Offence or Misdemeanor, or any Writ, Process, or Proceeding for any Debt or Account that shall be due to her Majesty or her Successors, shall be discontinued or put without Day, by reason of the Demise of the Crown, but shall continue in force, and be proceeded upon, notwithstanding such Demise. *Stat. 1 Ann. c. 8.*

And no original Writ, Writ of *Nisi Prius*, Commission, Process, or Proceeding whatsoever, in or issuing out of any Court of Equity, nor any Process or Proceeding upon any Office or Inquisition, nor any Writ of *Certiorari* or *Habeas Corpus*, in any Matter or Cause Criminal or Civil, nor any Attachment or Process for Contempt, Commission of Delinquency, or Review, or any Process thereupon, shall be discontinued by the Death of the Queen, or any King or Queen of this Realm. *Ibid.*

And this Act shall extend to *Ireland*, the Islands of *Jersey* and *Guernsey*, and to Her Majesty's Dominions in *America*, and elsewhere. *Ibid.*

READINGS.

Process awarded in the Reign of One King, executed in the Time of the Successor.

Appeal of Death revived.

Office of Sheriff determined by a Demise.

Upon the Statute of 1 *Ed. 6.* of Discontinuance of Process by the demise of the King, these Points were resolv'd, 1. If any judicial Writ, or any Process in a Court of Record be awarded in the time of the Predecessor of the King, the same may be executed in the time of the Successor. 2. If an Appeal of Death be deliver'd to the Sheriff within the Year, and before the Return of it, the King dieth, there by the Common Law the Plaintiff, upon a *Certiorari* directed to the Sheriff returnable in *B. R.* should have another Appealment, altho' the same doth not come in by the Return of the Sheriff, but by *Certiorari* for necessity; otherwise the Plaintiff, who lawfully bringeth his Suit within the Year without any Default in him, should lose his Appeal; and therefore because by Act of Law it is discontinued, the Law will give a Means to revive it. 3. That by the Death of the King, the Office of Sheriffs are determin'd; and without new Patents of

of their Offices, nothing can be done by them. But if a Man hath the Office of Sheriff by Inheritance by Charter, he may execute any judicial Writ awarded to him in the time of the Predecessor King. 4. That the Statute of 1 Ed. 6. extends only to Actions betwixt Party and Party, and doth not extend to Cases where the King is Party. 5. If an Information be preferr'd by the King, or *tam pro Domino Rege quam pro se ipso*, the subsequent Process abated. Information, the subsequent Process abated. and Issue or Demurrer is join'd, and the King dieth, all is abated but only the Information, and that shall stand, and upon that, Attachment shall be awarded; upon the Return of which, if the Defendant appear, he shall plead *de novo*; for altho' in general the King doth not die, and there is no Interregnum, yet in *Individuo* he dieth, and that stands upon great Reason; for upon many penal Statutes, the Suit is to be commenc'd within a certain time, and if the Information should not be of force after the Death of the King, the Offence should be unpunish'd. But if the King bring an Original as a *Quare Impedit*, the same shall abate by his Death. But if a Man be indicted in the time of the King, and pleads to Issue, and the King dieth, the Party shall plead *de novo*. Coke, 7 Part. The Case of Discontinuance of Process by demise of the King. 1 Hughes. Abr. 710, 711. 7 Cok. 30, 31.

Discontinuance of Estates.

NO Fine, Feoffment, or other Act done by the Husband only of any Lands, &c. being the Inheritance or Freehold of the Wife during the Coverture between them, shall make any Discontinuance thereof, or be prejudicial to the Wife or her Heirs, or to such as shall have Right, Title or Interest to the same by the Death of such Wife, but they may lawfully enter into the same according to their Rights and Titles therein; any such Fine, &c. to the contrary notwithstanding: Fines levied by the Husband and Wife whereunto she is Party or Privy only excepted. 32 H. 8. c. 28. Feoffment by the Husband of the Wife's Land shall make no discontinuance. Stat. 32 H. 8. cap. 28.

R E A-

READINGS.

Discontinu-
ance defin'd.

Where the
Husband and
Wife are
jointly feis'd,
it shall make
no Disconti-
nuance.

Wife may en-
ter in case of
a Divorce.

Wife must en-
ter within five
Years in case
of a Fine.

A Discontinuance of Estates in Lands or Tenements, is properly (in legal understanding) an Alienation made or suffer'd by Tenant in Tail, or by any that is feis'd in *Auter droit*, whereby the Issue in Tail; or the Heir or Successor, or those in Reversion or Remainder are driven to their Action, and cannot enter. 1 *Inst.* 325.

Where the Husband and Wife are jointly feis'd to them and their Heirs of an Estate made during the Coverture, and the Husband make a Feoffment in Fee, and dieth, the Wife now may enter within that Statute, altho' it was the Inheritance of them both. And so it is if the Feoffment be made by the Husband and Wife, (albeit the Words of the Statute be by the Husband only) for in effect this is the Act of the Husband only. *Ibid.* 326.

If the Husband cause a *Præcipe quod Reddat* upon a feint Title to be brought against him and his Wife, and suffereth a Recovery without any Voucher and Execution to be had against him and his Wife, yet this is holpen by the Statute; for this by like Construction is the Act of the Husband, and the Words of the Statute be, *made, suffer'd, or done.* *Ibid.*

If the Husband make a Feoffment in Fee of the Lands which he holdeth in the Right of his Wife, and after they are divorc'd *causa præcontractus*, yet the Woman may enter within the Purview of that Statute, and is not driven to her Writ of *Cui ante divortium*, as she was at the Common Law, albeit the Entry be by Statute given to the Wife, and now upon the Matter she was never his lawful Wife; but it sufficeth that she was his Wife *de Facto* at the Time of the Alienation, and where her Husband dieth, she cannot be his Wife at the Time of the Entry. *Ibid.*

If the Husband levy a Fine with Proclamations, and dieth, the Wife must enter, or avoid the Estate of the Conusee within five Years, or else

else she is barr'd for ever by the Statute of 4 H. 7. For the Statute of 32 H. 8. doth help the Discontinuance, but not the Bar; and the Statute speaketh of a Fine with Proclamations. *Ibid.*

If Lands be given to the Husband and Wife, and to the Heirs of their two Bodies, and the Husband maketh a Feoffment in Fee, and dieth, the Wife is holpen by the said Statute; and so is the Issue of both their Bodies.

Feme-Tenant in Tail taketh Husband, the Husband maketh a Feoffment in Fee, the Wife before Entry dieth without Issue; he in the Reversion or Remainder may enter, for the first Reversion or Remainder cannot be discontinued in this Case, because the Estate-Tail is not discontinued.

The Husband is Tenant in Tail, the Remainder to the Wife in Tail, the Husband makes a Feoffment in Fee; by this the Husband by the Common Law, did not only discontinue his own Estate Tail, but his Wife's Remainder; but at this Day after the Death of the Husband without Issue, the Wife may enter by the said Act of 32 H. 8. If the Husband hath Issue, and maketh a Feoffment in Fee of his Wife's Land, and his Wife dieth, the Heir of the Wife shall not enter during the Husband's Life, neither by the Common Law, nor by the Statute. *Ibid.*

Husband and Wife Joint-Tenant of a Manor, and to the Heirs of the Body of the Husband, the Remainder to B. in Tail; a Recovery is had in a Writ of Entry in the *Post* against the Husband alone in the Life of the Wife, with voucher: In this Case (amongst other Things) it was resolv'd, 1. That as long as the Recovery stood in Force, (for it was but avoidable) he in the Remainder had not any Right to the Remainder, in respect of the intended Recompence, but the same Remainder was barr'd for the Moiety, as if Tenant in Tail suffer an erroneous Recovery, and afterwards disseiseth the Recoveror, and dieth, the Issue in Tail shall not be remitted so long as the Recovery stands in Force: And a Man shall never be remitted, but where if the Right and Possession

on were in several Persons, he who hath Right, may have an Action to recover the Possession. 2. It was resolv'd, That for one Moiety the Recovery was a Bar to the Estate-Tail, and to the Remainder also; because that by the Recovery the Jointure was sever'd: but for the other Moiety whereof the Wife was Tenant for Life, the Recovery was not any bar to the Estate-Tail, or unto the Remainder, because of that Moiety there was not any Tenant to the *Pracipe*. 3 *Co.* 3. Marquess of *Winchester's* Case.

Husband and Wife Tenant in special Tail, the Husband alone levied a Fine to his own Use, and afterwards he devis'd the Land to his Wife for Life, the Remainder over rendring Rent, the Wife enters, and pays the Rent, and dieth. In this Case it was resolv'd, That the Fine had barr'd the Issue in Tail, but not the Wife. *Trin.* 18. *Al. Dyer* 351. See *Coke* 1. *Part* 78. in *Corber's* Case. And because the Issue cannot claim as Heir to both. 2. That in this Case, the Entry of the Wife was a Disagreement to the Estate of Inheritance, and an Agreement to the Estate for Life, as it is said in *Coke* 3. *Part* 26. in *Butler* and *Baker's* Case. But in this Case, if the Wife had not wav'd, the Estate-Tail as to the Wife had remain'd. 9 *Coke* 139. in *Beaumont's* Case.

Dissenters.

5 & 6 Ed. 6.
c. 1.

All Persons to
resort to some
Church where
Common-
Prayer is us'd.

Every Person having no reasonable Excuse to be absent, shall resort to his Parish Church or Chappel accustomed, or upon reasonable Let thereof, to some usual Place where Common Prayer shall be us'd upon every Sunday, and other Days kept as Holidays, and there abide orderly and soberly during the time of the Common-Prayer, Preaching, or other Service of God, there to be us'd, upon pain of Punishment by the Censures of the Church. *Stat.* 5 & 6 Ed. 6. *cap.* 1.

1 Eliz. c. 2.
Persons not
coming to
Church for-
feit 12 d.

Every Person that shall not resort to his Parish-Church or Chappel accustomed, upon every Sunday and Holiday, and there abide orderly and soberly, shall incur the Censures of the Church, and forfeit 12 d. for every Offence.

to be levied by the Church-Wardens by distress, to the Use of the Poor. *Stat. 1 Eliz. cap. 2.*

Justices of Oyer and Terminer or of Assize, are authoriz'd to hear and determine all Offences against this Act, and award Execution of the same. *Ibid.*

Provided that the Bishop may associate himself with the said Justices for hearing and determining the Offences aforesaid. *Ibid.*

No Person to be prosecuted unless he be indicted at the next Assizes after the Offence. *Ibid.*

The Jurisdiction of the Ecclesiastical Courts as to the Offences aforesaid, is saved. *Ibid.*

Provided that none be punish'd twice for the same Offence. *Ibid.*

Every Person above the Age of sixteen Years, who shall not repair to some Church, Chappel, or usual Place of Common Prayer, but forbear the same contrary to the 1 *Eliz. cap. 2.* shall forfeit to the Crown for every Month he shall so forbear 20 l. And every Person so forbearing for twelve Months besides the said Forfeiture, shall for his or her Obstinacy, after Certificate thereof made into the King's Bench by the Ordinary, Justice of Assize, Goal-delivery or a Justice of Peace of the County, be bound with two sufficient Sureties in 200 l. at least, for his good Behaviour, and so continue until such Person conform and come to Church according to the said Statute.

And if any Person shall keep or maintain any School-Master who shall not repair to Church as aforesaid, or be allow'd by the Ordinary, he shall forfeit for every Month so keeping him 10 l. And such School-Master presuming to teach contrary to this Act, shall be disabled to be a Teacher, and be imprison'd for one Year without Bail or Mainprize.

And all Offences against this Act, or against the 1 *Eliz.* shall be inquirable as well before Justices of Peace as other Justices nam'd in the said Statute, within one Year after the Offence. And Justices of Oyer and Terminer, and Justices of Assize and Goal-delivery are also empower'd to hear and determine the Offences aforesaid.

Provided that every Person guilty of any Offence against this Statute, who shall before he is indicted, or at his Arraignment or Trial, before Judgment, submit and conform himself before the Bishop of the Diocess, or before the Justices where he shall be indicted, arraign'd or try'd, having not made the like submission at any former Trial, shall upon such submission in open Assizes or Sessions of the County, be discharg'd of every the said Offences, and of all pains and forfeitures for the same. *Ibid.*

To be indicted at next Assizes.

23 *Eliz. c. 1.*
Persons absenting a Month from Church forfeit 20 l.

And to be bound to their good Behaviour.
Forfeiture of 10 l. for keeping dissenting School-Master.
Such School-Master disabled and imprison'd.
Justices of Peace empower'd to inquire of these Offences.
Persons conforming discharg'd of the Pains.

Forfeitures
divided.

One Third of the Forfeitures by this Act to go to the Crown, and another Third to the Poor of the Parish where the Offence is committed, and the remaining Third to such Person as shall sue for the same by Action of Debt, Bill, Plaint or Informtaion in any Court of Record. And every Person not paying the said Forfeitures within three Months after Judgment given, shall be committed to Prison until he hath paid the same. *Ibid.*

Saving for
Persons ha-
ving divine
Service in
their Houses

Provided that every Person who usually on Sunday shall have divine Service in his House according to Law, and be usually present thereat himself, and shall not obstinately refuse to come to Church, and there do as aforesaid, and also four times in the Year at least be present at divine Service in the Church of the Parish, or some other common Church or Chappel of Ease. shall not incur any Pain by this Act. And every Conveyance, Bond or Assurance made to defraud the Crown, or any other Person, of the Forfeitures incurr'd by the means of any Conviction, shall be void.

Provided that this Act shall not abridge the Ecclesiastical Jurisdiction.

29 Eliz. c. 6.
Fraudulent
Conveyances
by Persons ab-
senting them-
selves from
Church to
defraud the
Crown of the
Penalty, void.

Every Grant, Conveyance, Lease, Incumbrance, and Limitation of Use out of any Lands, &c. to be had or made by any Person who shall not repair to some Church, Chappel, or usual Place of Common-Prayer, contrary to the 23 Eliz. c. 1. and which shall be revocable at the Pleasure of such Offender, or is directly or indirectly intended to or for the Behoof or Maintenance, or at the Disposition of any such Offender, or whereby or in Consideration whereof such Offender, or his Family, shall be maintain'd or reliev'd, shall be utterly void against the Queen, as to the levying and paying of such Sums, as any Person ought to pay or forfeit for not coming to Church as aforesaid, and shall be seis'd to her Majesty's Use, as is hereafter mention'd. *Stat. 29 Eliz. Cap. 6.*

Where the
Offence shall
be try'd.

And every Conviction for any Offence before mention'd, shall be in the Court of King's Bench, or at the Assizes or general Goal-Delivery, and not elsewhere; and shall from the Justices before whom the Record of such Conviction shall remain, be estreated and certify'd into the Exchequer before the End of the Term next ensuing. *Ibid.*

Recusant con-
vict to pay
20 l. per
Month for
not coming to
Church.

And every Offender in not repairing to divine Service as aforesaid, who shall be thereof once convicted, shall in such of the Terms of *Easter* or *Michaelmas* as shall be next after such Conviction, pay into the Exchequer after the Rate of 20 l. for every Month contain'd in the Indictment whereupon such Conviction shall be; and shall also for every

every Month after such Conviction, without any other Indictment or Conviction, pay into the Exchequer at twice in every Year, viz. in *Easter Term* and *Michaelmas Term*, after the Rate of 20 l. for every Month after such Conviction. And if default shall be made in any part of the Payments aforesaid, then the Queen may by Process out of the Exchequer, take and seize all the Goods and two parts as well of the Lands liable to such seizures or to Or the Crown the Penalties aforesaid, leaving the third part only of may seize all the same Lands for the Maintenance and Relief of the his Goods, Offender and his Family. *Ibid.* and two thirds

And the Indictment of every such Offender mentioning of his Lands, his not coming to Church as aforesaid, shall be sufficient in Law; and it shall not be needful to mention that the Offender was or is inhabiting within this Realm, or any other the Queen's Dominions; but if he happen then not to be within this Realm, or other her Majesty's Dominions, the Party shall be reliev'd by Plea in that behalf, and not otherwise; and upon the Indictment of such Offender, Proclamation shall be made at the same Assizes or Goal-delivery, if the same be there taken, Commanding that the Body of such Offender be render'd to the Sheriff of the same County before the next Assizes, or Goal-delivery; and if the said Offender so proclaim'd, Offender not shall not make appearance of Record, then upon such coming in up- default recorded, the same shall be a sufficient Conviction Proclamation in Law of the Offence whereof the Party stands in-tion to stand dicted, as if a Verdict had been had thereupon and re- convicted. *Ibid.*

Provided that whenever such Offender shall make sub- Forfeiture dis- mission, and become conformable according to the 23 *Eliz.* charg'd by *cap. 1.* or shall fortune to die, then no forfeiture of 20 l. conformity or a Month, or seizure of the Lands of the same Offender death. after such submission and conformity, or death and satisfaction of all Arrearages of the 20 l. monthly before such seizure due, shall be continued so long as the Offender shall continue coming to divine Service according to the said Statute. *Ibid.*

And whereas a third part of the Forfeitures by the said Third part of Statute is given to the Poor, it shall be lawful for the Lord Forfeitures to Treasurer, Chancellor, and Chief Baron of the Exche- the Poor. quer, or two or them, to dispose of the third part of the 20 l. a Month to be paid into the Exchequer, for the Maintenance as well of the Poor and of the Houses of Correction, as of impotent and maim'd Soldiers, as they or any two of them shall appoint. *Ibid.*

Provided that this Act shall not extend to any Grant Saving for or Lease to be made *bona fide* without fraud, which shall Lands granted not *bona fide*.

not be revocable at the Pleasure of such Offender, otherwise than to give Title to the Queen to have and enjoy such Rents and Payments during the Continuance of such Lease and Grant. *Ibid.*

And Lands held for Term of Life, &c. Provided, that this Act do not extend to continue the Seizure of any Lands of such Offender after his Death which he shall be seiz'd of only for Term of his Life, or in the Right of his Wife. *Ibid.*

35 Eliz. c. 1. If any Person above the Age of sixteen who shall obstinately refuse to repair to some Church, Chappel, or usual Place of Common-Prayer, to hear Divine Service establish'd by Law, and shall forbear to do the same for a Month next after without any lawful Cause; or shall by Printing, Writing, or expresse Words, advisedly or purposely practise, or go about to move or persuade any Subject of the Queen's to deny, withstand, and impugn her Majesty's Power in Cases Ecclesiastical; or to that end shall advisedly and maliciously move or persuade any other Person to forbear coming to Church to hear Divine Service, or to receive the Communion, according to Law; or to come to, or be present at, any unlawful Assemblies, Conventicles, or Meetings, under colour of Exercise of Religion, contray to Law; or if any Person who shall obstinately refuse to come to Church, and forbear for a Month to hear Divine Service as aforesaid, shall willingly join in, or be present at, any such Assemblies, Conventicles, or Meetings; such Offender, being thereof convicted, shall be committed to Prison without Bail or Mainprize until they shall conform and hear Divine Service according to Law, and make such open Submission and Declaration of their Conformity as hereafter is appointed. *Stat. 35 Eliz. cap. 1.*

And if they remain obstinate three Months, to abjure the Realm Provided, that if any Person who shall offend as aforesaid shall not within three Months after Conviction conform himself to the Obedience of the Laws, in coming to Church, and making such Confession and Submission as hereafter is appointed, being thereunto requir'd by the Bishop of the Diocess, or any Justice of Peace of the County where he shall happen to be, or by the Minister or Curate of the Parish; then every such Offender, being thereto requir'd by a Justice of Peace of the same County where he shall then be, shall upon his corporal Oath be-

At the Quarter-Sessions. fore the Justices of Peace in the open Quarter-Sessions, or at the Assizes and Goal-Delivery of the same County, abjure this Realm and all other the Queen's Dominions, unless her Majesty shall license him to return, and thereupon shall depart the Realm at such Port, and within such Time, as shall be appointed by the Justices before whom

whom such Abjuration shall be made, unless prevented by some lawful Cause, and then within such reasonable Time as the Law requires in case of Abjuration for Felony: And the Justices of Peace before whom such Abjuration shall be made shall cause the same presently to be recorded, and it shall be certify'd at the next Assizes of Goal-Delivery to be holden in the same County.

And if any Person shall refuse to make Abjuration as Refusing to
aforesaid, or after such Abjuration shall not go to the abjure, or re-
port within the Time appointed, and depart the Realm, turning again,
according to this Act, or after such Departure shall re- Felony with-
turn again without the Queen's License, he shall be ad- out Clergy.
judg'd a Felon without Benefit of Clergy. *Ibid.* Offender con-

But if any Offender before he is requir'd to make such forming and
Abjuration shall repair to some Parish Church on some making the
Sunday, or other Holiday, and there hear Divine Service, Confession in
and before the Sermon and Reading of the Gospel make this Act to be
publick and open Submission and Declaration of his Con- discharg'd of
formity as hereafter is appointed, he shall be discharg'd of the Pains.
all and every the Penalties and Punishments inflicted by
this Act for any of the Offences aforesaid: Such Sub-
mission to be as followeth. (*viz.*)

*I A. B. do humbly confess and acknowledge that I have grie- Form of the
vously offended God in contemning her Majesty's godly and lawful Confession,
Government and Authority, by absenting my self from Church,
and from hearing Divine Service, contrary to the godly Laws and
Statutes of this Realm, and in using and frequenting disorder'd
and unlawful Conventicles and Assemblies, under pretence and co-
lour of Exercise of Religion; and I am heartily sorry for the
same, and do acknowledge and testify in my Conscience, that no
other Person hath, or ought to have, any Power or Authority over
her Majesty. And I do promise and protest, without any Dissimu-
lation, or any colour or Means of any Dispensation, that from
henceforth I will from time to time obey and perform her Majesty's
Laws and Statutes, in repairing to the Church, and bearing Di-
vine Service, and do my uttermost Endeavour to maintain and de-
fend the same.*

And every Minister or Curate of the Parish where such To be enter'd
Submission and Declaration shall be made shall presently and certified
enter the same in a Book, to be kept in every Parish, and to the Bishop.
within ten Days certify the same in Writing to the Bishop
of the Diocess. *Ibid.*

Provided, that if any Offender after such Submission Person relap-
made shall relapse, or obstinately refuse to repair to some sing loses the
Church as aforesaid, or shall be present at any such As- Benefit of his
semblies, Conventicles, or Meetings, contrary to Law, he Submission.
shall lose all such Benefit as he might otherwise by virtue

of this Act have enjoy'd by reason of his said Submission.
Ibid.

Forfeiture of And if any Person shall relieve, maintain, retain, or
10 l. a Month keep in his House, or otherwise, any Person who shall ob-
for relieving stinately refuse to come to Church, and hear divine Ser-
or harbouring vice, as aforesaid, and forbear by the space of a Month
one who does together; every Person who shall so relieve, maintain, re-
not come to tain, or keep any such Offender after Notice given to him
Church. by the Ordinary, or by any Justice of Assize of the Circuit,
or any Justice of Peace in the County, or the Minister, Cu-
rate, or Churchwardens of the Parish where such Person
shall then be, shall forfeit 10 l. to the Queen for every Month
he shall so relieve, maintain, or keep such Offender.

Not to extend Provided, that this shall not extend to the maintaining
to near Rela- or keeping his Wife, Father, Mother, or Children, Wards,
tions in Want. Brother or Sister, or his Wife's Father or Mother, nor
having any certain Habitation of their own, or the Hus-
bands or Wives of any of them, or to the maintaining or
keeping of any Person committed by Authority to their
Custody.

Where Forfei- And all and every the said Pains, Duties, Forfeitures,
tures are reco- and Payments, accruing by virtue of this Act, or the
verable. 23d of *Eliz. cap. 1.* may be recover'd to her Majesty's Use
in the Court of King's Bench, Common Pleas, or Exche-
quer, by Action of Debt, Bill, Plaint, Information, or
otherwise, wherein no Essoign, &c. shall be allow'd. *Ibid.*

Feme Covert Provided, that no Recusant being a Feme Covert shall
need not ab- be compell'd to abjure by virtue of this Act.

Goods and Provided, that every Offender who shall abjure by
Profits of force of this Act, or refuse to abjure, as aforesaid, shall
Lands forfeit- forfeit to her Majesty all his Goods and Chattels, and
ed by Offen- lose his Lands, &c. during his Life; but the Wife of any
ders. such Offender shall not lose her Dower, nor any Cor-
ruption of Blood be incurr'd for any Offence against this

No loss of Act, but the Heir may enjoy the Lands of such Offender
Dower, or as if this Act had never been made. *Ibid.*

Corruption of All Statutes made against any manner of Recusants in
Blood in- the Reign of Queen Elizabeth shall be put in Execution.
curr'd. *Stat. 1 Jac. 1. cap. 4.*

1 Jac. 1. c. 4. Provided, that if any Recusant shall submit and become
Statutes of obedient to the Laws and Ordinances of the Church of
Recusancy England, and repair to the Church, and continue there
confirm'd. during the Time of Divine Service and Sermons, accord-
Offender con- ing to the said Statutes; he shall, during the Time of
forming dis- such Conformity, be discharg'd of all Penalties and Losses
charg'd of all which he might otherwise sustain by reason of his Recu-
Pains. sancy. And the Heir of every Recusant, being no Recu-
Heir of Re- sant, shall be discharg'd of all Penalties in respect of his
cusant dis- Ancestor's

Ancestor's Recusancy. And if such Heir shall be a Recu-charg'd
sant, and afterwards conform as aforesaid, and take the on Confor-
Oath of Supremacy, made in the first Year of Queen mity.
Elizabeth, before the Archbishop or Bishop of the Diocess;
such Heir shall be discharg'd of all Penalties by reason of
his Ancestor's Recusancy. *Ibid.*

Provided, that if the Heir of any Recusant shall be un-
der sixteen Years of Age at the Death of his Ancestor,
and shall be a Recusant, then such Heir shall not be dis-
charg'd of the said Penalties incurr'd by his Ancestor's
Recusancy until he conform as aforesaid, and take the
said Oath of Supremacy; but after such Submission and
Oath taken he shall be discharg'd of all Penalties happen-
ing by reason of his Ancestor's Recusancy. *Ibid.*

And where any Seizure shall be made of the two Parts Two Thirds
of any Lands, Leases, or Farms, for Non-payment of the of Recusants
20 l. payable for each Month, such two Parts shall go to- Lands to go
wards the Satisfaction and Payment of the 20 l. payable towards the
for each Month; but the other Third shall not be ex- 20 l. per
tended or seiz'd by the King for Non-payment of the Month.
said 20 l. a Month. And where such Seizure shall be
made of the two Parts, and such Recusant shall die,
the said two Parts shall continue in his Majesty's Possession
until the Remainder of the said Duty shall be paid or dis-
charg'd; and his Majesty shall not seize or extend the
other third Part descending to such Heirs either by rea-
son of the Recusancy of his Ancestor, or the Recusancy
of any such Heir. *Ibid.*

And no Woman, or any Child under the Age of Women or
twenty one, except Sailors, or Ship-Boys, or the Appren- Children not
tice of a Factor or some Merchant, shall be permitted to to pass the
pass the Seas without the License of the King or of six Seas without
or more of the Privy Council first had under their License,
Hands, upon pain that the Officers of the Port that shall
suffer any to pass, or shall not enter the Names of such
Passengers licens'd, shall forfeit their Offices, and all their
Goods and Chattels; and the Owner of any Ship or Ves-
sel that shall wittingly or willingly carry any such beyond On pain of
Sea without License, shall forfeit his Ship or Vessel, and Forfeiture of
Tackle; and every Master or Mariner offending as afore- the Ship and
said shall forfeit all their Goods and Chattels, and suffer Cargoe,
twelve Months Imprisonment without Bail or Mainprize. And Impri-
Ibid. sonment of

And no Person shall keep any School, or be a School- the Master,
master, out of the Universities or Colleges of this Realm, Recusant
except in some publick or free *Grammar* School, or in not to keep
some Nobleman's or Gentleman's House, (who are not School.
Recusants) unless the said Schoolmaster shall be licens'd
by

by the Archbishop or Ordinary of the Diocese; upon pain that the said Schoolmaster, and the Party retaining or maintaining him, shall forfeit each of them for every Day so wittingly offending 40 s. one Moiety of the Forfeitures by this Act to go to the Crown, and the other to him that will sue for the same in any of the Courts of Record at *Westminster* by Action of Debt, Bill, Plaint, or Information, in which no Essoign, &c. shall be allow'd, *Ibid.*

3 *Jac.* 1. c. 4. The Justices of Assize and Goal-Delivery at their Assizes, and the Justices of Peace at their Quarter-Sessions, and of the are authoriz'd by this Act to enquire, hear, and determine, of all Recusants and Offences, as well for not receiving the Sacrament according to this Act, as for not repairing to Church according to the former Laws, in such manner as Justices of Assize and Goal-Delivery might do by former Laws in case of Recusancy for not repairing to Church; and also shall have Power at their Assizes and Goal-Delivery, and at the said Sessions in which any Indictment shall be taken for the said Offences, to make Proclamation, that the Body of every such Offender shall be render'd to the Sheriff of the same County, or Bailiff, or other Keeper of the Goal of the Liberty, before the next Assizes or the next general Quarter-Sessions respectively; and if the Offender so proclaim'd shall not make Appearance of Record, then upon every such Default recorded, the same shall be as sufficient a Conviction as if upon the same Indictment a Trial by Verdict had been found and recorded. *Stat. 3 Jac. 1. cap. 4.*

And every Offender in not repairing to Divine Service as aforesaid who shall be thereof once convicted shall in such of the Terms of *Easter* or *Michaelmas* as shall be next after such Conviction pay into the *Exchequer* after the rate of 20 l. for every Month contain'd in the Indictment whereupon such Conviction shall be; and shall also for every Month after such Conviction, without any other Indictment or Conviction, pay into the *Exchequer* at twice in every Year. (*viz.*) in *Easter* Term and *Michaelmas* Term, as much as shall then remain unpaid, after the rate of 20 l. for every Month after such Conviction, except where the King shall by force of this Act refuse the same, and take two Parts of the Lands, Leases. and Farms, of such Offender until he conform himself and come to Church according to the Statute in that Behalf made and provided. *Ibid.*

And every Conviction recorded for any Offence shall from the Justices before whom the Record shall be remaining, be certify'd into the *Exchequer* before the End of the Term

Term following such Conviction in such convenient Certainty as the Court of *Exchequer* may award Proceſs for the Seizure of the Lands and Goods of ſuch Offender; and if Default ſhall be made in any Part of any Payment aforeſaid, then the King may by Proceſs out of the *Exchequer* ſeize all the Goods, and two Parts as well of all the Lands, Leaſes, and Farms, of ſuch Offender, as of all other the Lands liable to ſuch Seizure or to the Penalties aforeſaid, leaving the third Part only of the ſame Lands for the Maintenance of the ſaid Offender, his Wife, Children, and Family. *Ibid.*

And it is enacted, that the King ſhall have full Power The Crown and Liberty to reſuſe the Penalty of 20 *l.* a Month given may reſuſe the by this or any other former Statutes, tho it be tender'd 20 *l.* a Month, according to Law, and to ſeize and take two third Parts and take the as well of all Lands, Leaſes, and Farms, that at the time two Parts of offuch Seizure ſhall be, or ſhall afterwards come to, any the the Lands. ſaid Offenders in not coming to Church, or any other to their Uſe, or in Truſt for them, or at their Diſpoſition, or whereby, or in conſideration whereof, ſuch Offender, or his Family, or any of them, ſhall be reliev'd or maintain'd; as of all other Lands in any wiſe, or at any time, liable to ſuch Seizure, or to the Penalties aforeſaid: And the ſame to retain till the Offenders reſpectively ſhall conform themſelves as aforeſaid, in lieu and full Recompence of the 20 *l.* monthly that during ſuch Seizure and Retainer ſhall incur, ſaving to his Maſteſty, and every other Perſon, other than the ſaid Offenders, and their Heirs, and all claiming to their Uſe, or in Truſt for them, or at their Will or Diſpoſition, all Leaſes, Rents, Conditions, and other Rights and Titles, made *bona Fide*, without Fraud, before ſuch Seizure.

Provided, that the King ſhall leave to ſuch Offender Offender to his chief Manſion Houſe, as part of his third Part, and have his Manſion Houſe. ſhall not not demife, or make over, the ſaid two Parts to ſion Houſe. any Recuſant, or to the Uſe of any Recuſant; and who- Waſte ſhall eyer ſhall take the ſame on Leaſe, or otherwiſe, of his not be com- Maſteſty, ſhall give ſuch Security not to ſuffer Waſte to mitted on the be committed as the Court of *Exchequer* ſhall approve. two Parts ſeiz'd. *Ibid.*

And it ſhall be lawful for any Biſhop in his Dioceſs, or The Biſhop or any two Juſtices of Peace (*Quor' un'*) out of Seſſions, to two Juſtices require any Perſon of eighteen Years of Age, or above, to tender the who ſhall be convicted or indicted of Recuſancy (other Oath of Obe- than the Nobility) for not repairing to Divine Service, dience to Re- or who ſhall not have receiv'd the Sacrament twice within cuſants. the Year paſt; or any Perſon paſſing through the Coun- ty, Shire, or Liberty, and unknown, (except as aforeſaid) who

who being examin'd upon Oath shall confess, or not deny, the being a Recusant, or shall confess, or not deny, their not having receiv'd the Sacrament within the Year past; to take the Oath of Obedience in the Act specified: Which said Bishop or two Justices shall certify under their Hands to the next general Quarter-Sessions the Christian and Sirname, and Place of Abode, of every Person who shall take the said Oath; which Certificate shall be recorded by the Clerk of the Peace, or Town-Clerk, and kept among the Records of the Sessions. *Ibid.*

Persons refusing the Oath on a second Tender at the Assizes to incur a *Premunire*.

And if any Person (other than the Nobility) shall refuse to answer upon Oath to such Bishop or Justices of Peace examining of them, or to take the said Oath so tender'd to them as aforesaid, then the said Bishop or Justices of Peace shall commit the same Person to the Common Goal without Bail or Mainprize until the next Assizes or Quarter-Sessions, where the said Oath shall be again requir'd of such Person: And if the said Person, or other Person whatsoever, (other than the Nobility) of eighteen Years of Age, or above, shall refuse to take the said Oath, he shall incur a *Premunire*, except Women Covert, who upon such Refusal shall by the Justices of Assize or Justices of Peace in their Quarter-Sessions, be committed to the Common Goal without Bail or Mainprize until they take the said Oath, which See under Title *Oaths* and *Popish Recusants*: Unto which Oath the said Person shall subscribe his Name or Mark. *Ibid.*

Indictments for Recusancy not to be reversed for want of Form, but by a direct Traverse,

And no Indictment against any Person for not coming to Church, but absenting himself for one Month, contrary to the Statutes in that behalf, or for not receiving the Sacrament according to this Act, nor any Proclamations, Outlawry, or other Proceedings thereupon, shall be avoided or reversed for want of Form, or other Defect whatsoever, other than by direct Traverse to the Point of not coming to Church, or not receiving the Sacrament. *Ibid.*

Unless the Offender conform.

Provided, that if any Person indicted shall submit and conform according to the Statutes in that behalf provided, that from thenceforth he shall be allow'd to avoid, discharge, or reverse such Indictments, and all Proceedings thereupon, in such manner as if this Act had not been made. *Ibid.*

And every Person who shall go out of this Realm and serve any foreign Prince or State, not having before his going over taken the Oath aforesaid, shall be deem'd a Felon. *Ibid.*

Persons of Quality, or Officers of the

And if any Gentleman, or Person of higher Degree, or any Person who hath born any Office or Place of Captain, Lieutenant, or any other Charge or Office in Camp or Army,

Army, or Conduct of Soldiers, shall voluntarily pass out Army, ser- of this Realm to serve any such Prince or State, or shall ving foreign voluntarily serve any such Prince or State, before he shall Princes before be bound with two Sureties to his Majesty in 20 l. with they have Condition to the Effect following, he shall be a Felon. given Bond to

The Tenure of which Condition followeth, viz. *That* bear true Al- if the within Bounden, &c. shall not at any time be then after re- legiance, &c. concil'd to the Pope or See of Rome, nor shall enter into, or con- deem'd Fe- sent unto any Practice, Plot, or Conspiracy whatsoever, against the lons.

King's Majesty, his Heirs and Successors, or any his and their Estate and Estates, Realms or Dominions; but shall within con- venient time after Knowledge thereof had reveal and disclose to the King's Majesty, his Heirs and Successors, or some of the Lords of his or their honourable Privy Council, all such Practices, Plots, and Conspiracies; that then the said Obligation to be void.

And it shall be lawful for the Customer and Com- To be taken ptroller of every Port, and their respective Deputies, and by the Offi- none other, to accept such Bond. and administer the Oath cers of the abovemention'd, who shall certify the same into the Ex- Customs. chequer once every Year, upon pain of 5 l. for every Bond, and 20 s. for every Oath, not so certify'd. *Ibid.*

And if any Person shall not resort every Sunday to some Justice of Church, Chappel, or other usual Place appointed for Peace may Common-Prayer, and there hear Divine Service according levy 1 s. for to the Statute of 1 Eliz. cap. 2. that then it shall be law- every Sunday ful for any Justice of Peace of that Limit, Division, or a Person is Liberty, where the said Party shall dwell, upon Proof by absent from Confession, or Oath of one Witness, to call the said Party Church; before him, and if he shall not make a sufficient Excuse and Proof thereof to the Satisfaction of the Justice, it shall be lawful for the said Justice to give a Warrant to the Churchwarden of the Parish to levy 12 d. for every such Default by Distress and Sale of the Goods of the Of- fender; and in Default of Distress, commit him to some And in De- Prison within the Shire, Division, or Liberty, wherein fault of Di- he shall inhabit till Payment made: Which Forfeitures stress commit shall go to the Poor of the Parish where the Offender shall the Offender be resident or abiding at the time of the Offence. *Ibid.* till Payment.

Provided, no Man be prosecuted upon this Clause above one Month after the said Default made; and none who are punish'd according to this Branch shall be punish'd by the Forfeiture of 12 d. upon the Statute of 1 Eliz.

And the Clause in the 35 Eliz. cap. 1. against the re- Clause in the lieving, maintaining, or keeping a Recusant in any Per- 35 of Eliz. son's House is hereby repeal'd; and in lieu thereof it is against har- enacted, that every Person who shall willingly main- bouring Recu- tain, relieve, or harbour in their House any Servant fants repeal'd.

Sojourner

Penalty of
harbouring
Servant, So-
journer or
Stranger, Re-
cusant, 10 l.
per Month.

Sojourner or Stranger, who shall not repair to some Church or Chappel, to hear Divine Service, for the space of one Month together, not having reasonable Excuse, contrary to the Laws of this Realm, shall forfeit 10 l. for every Month they shall so relieve, maintain, keep or harbour such Servant, Sojourner or Stranger in their House. *Ibid.*

And every Person who shall retain or keep in his Service, Fee, or Livery, any such Person not repairing to Church as aforesaid, shall for every Month he shall so keep such Person in his Service, Fee or Livery, knowing the same, forfeit to l. *Ibid.*

Not to extend
to Father or
Mother in
Want.

Provided, that this shall not extend to punish any Person for maintaining, relieving, or harbouring his Father or Mother wanting without Fraud other Habitation or sufficient Maintenance, or the Ward of any such Person, or any Person that shall be committed by Authority to their Custody. *Ibid.*

Where Offences shall be
tried.

And the Offences aforesaid shall be enquir'd of, heard, and determin'd, before the Justices of the King's-Bench, Justices of Assize and Goal-Delivery, and the Justices of Peace in their general Quarter-Sessions. *Ibid.*

Provided, that this Act shall not extend to abridge the Ecclesiastical Jurisdiction. *Ibid.*

Feme Covert
not receiving
Sacrament in-
demnified.

And no Person shall be charg'd with any Penalty or Forfeiture by this Act for his Wife's not receiving the Sacrament during her Marriage; nor shall any Woman be chargeable with any Penalty or Forfeiture by force of this Act for not receiving it during her Marriage. *Ibid.*

Privy Council
to tender the
Oath to the
Nobility.

Provided, that in all Cases where any Bishop or Justices of the Peace may by this Act require of any Subject the Oath abovemention'd, the Lords of the Privy-Council, or any six of them, whereof the Lord Chancellor, Lord-Treasurer, or the Principal Secretary of State, to be one, shall have Power to require and take the said Oath of any Nobleman or Woman above eighteen Years of Age; and if any such (other than a married Woman) shall refuse to take such Oath, they shall incur a *Premunire*. *Ibid.*

Provided, that where any Person shall go or pass out of the Cinque-ports, or any Member thereof, beyond Sea to serve any foreign Prince or State, the Lord Warden of the Cinque-Ports, or any Person by him appointed, shall have Power to take the said Bond, and administer the said Oath to such Passengers as are abovemention'd. *Ibid.*

13 Car. 2. c. 1.

If any Person or Persons who maintain that the taking of an Oath in any Case whatsoever, altho' before a lawful Magistrate, is altogether unlawful, and contrary to the

the Word of God, shall wilfully and obstinately refuse *Quakers* refuse to take an Oath where by Law he is bound to take the same, being duly tender'd; or shall endeavour to persuade any other Person to whom such Oath shall be duly tender'd to refuse the same; or shall by Printing, Writing, or otherwise, go about to maintain and defend that the taking an Oath in any Case is altogether unlawful; and if the Persons call'd *Quakers* shall depart from their several lawfulness of Habitations and assemble to the Number of five or more it, of the Age of sixteen Years or upwards in any Place, under pretence of joining in religious Worship, not authoriz'd by Law; such Offender, being convicted by Verdict of twelve Men, or his own Confession, or the notorious Evidence of the Fact, shall forfeit to the Crown for his first Offence a Sum not exceeding 5 *l.* and if he shall afterwards be convicted of a second Offence, he shall forfeit a Sum not exceeding 10 *l.* the said Penalties to be levied by Distress and Sale by Warrant of the Court before whom he shall be convicted; and for want of Distress or Non-payment within one Week after Conviction, he shall for the first Offence be committed to the common Goal or House of Correction for three Months; and for the second Offence, six Months without Bail or Mainprize; there to be kept to hard Labour: Which Forfeitures shall be employ'd for the Increase of the Stock of the House to which he shall be committed, and providing Materials to set him on Work. And if any Person shall be convicted a third time of any of the said Offences, he shall abjure the Realm, or it shall be lawful to his Majesty to order him to be transported to the *English* Plantations.

Stat. 13 Car. 2. cap. 1. Third Offence, Abjuration or Transportation.

And every Justice of Oyer and Terminer, Justices of Assize and Goal-Delivery, and the Justices of Peace in their general Sessions, are impower'd to enquire, hear, and determine the said Offences, and to make Process for the Execution of the same, as against Persons indicted before them of Treasons; and it shall be lawful for any Justice of Peace, Mayor, or other chief Officer, in their several Limits to commit or bind over with sufficient Sureties to the Quarter-Sessions any such Offender. *Ibid.*

Provided, that if any Person after such Conviction shall take such Oath or Oaths for which he stands committed, and give Security not to meet in any such unlawful Assembly, he shall be discharged from the Penalties afore-said. *Ibid.*

Provided, that every Lord of Parliament for every such third Offence shall be tried by his Peers, and not otherwise. *Ibid.*

Whereas

17 *Car. 2. c. 2.* Whereas divers Parsons, Vicars, Curates, Lecturers, Dissenting and others in holy Orders, have not declar'd their un-Teachers not feign'd Assent and Consent to the Use of all things con- to come with- tain'd in the Book of Common-Prayer, and subscrib'd the in five Miles Declaration in the 14 *Car. 2. cap. 4.* for the Uniformity of a Corpora- of publick Prayers, &c. and whereas some of them, and tion, divers other Persons not ordain'd according to the Church

of England, have since the Act of Oblivion preach'd in unlawful Assemblies or Conventicles, under pretence of Exercise of Religion have settled in divers Corporations, thereby taking an Opportunity to distil the poisonous Principles of Schism and Rebellion into the Hearts of his Majesty's Subjects; it is enacted, that the said Parsons, and other Persons in holy Orders, or pretended holy Orders, and others who have been possess'd of any Ecclesiastical or Spiritual Promotion, who shall not have declar'd their unfeign'd Assent and Consent as aforesaid, and subscrib'd the said Declaration, and shall not take and subscribe the following Oath, (*viz.*)

I A. B. do swear, that it is not lawful upon any Pretence whatsoever to take Arms against the King, and that I do abhor that traiterous Position of taking Arms by his Authority against his Person, or against those that are commission'd by him, in pursuance of such Commissions; and that I will not at any time endeavour any Alteration of Government either in Church or State.

And all such Persons as shall preach in any Conventicle or Meeting under pretence of Exercise of Religion, shall not, unless in passing upon the Road, come, or be, within five Miles of any City, or Town-Corporate, or Borough, Or within five Miles of the Place where they have been Teachers.

On pain of
40 l.

that sends Burgesses to Parliament, or within five Miles of any Parish, Town, or Place, wherein they have since the Act of Oblivion been Parson, Vicar, Curate, Stipendary, or Lecturer, or preach'd in any such unlawful Conventicle or Meeting, before they have taken and subscrib'd the Oath aforesaid at the Quarter-Sessions of the County or Division next unto the said Corporation, City, Borough, Parish, Place, or Town, on pain of 40 l. for every Offence; one Third to the Crown, another to the Use of the Poor where the Offence is committed, and the other Third to such Person as will sue for the same by Action of Debt, Plaint, Bill, or Information, in the Courts at Westminster, or before Justices of Assize, Oyer and Terminer, or Goal-Delivery, or before Justices of the Counties Palatine of Chester, Lancaster, or Durham, or the Justices in the great Sessions in Wales, or before the Justices in their Quarter-Sessions; wherein no Essoign, &c. shall be allow'd. *Ibid.*

Provided,

Provided, that no Person restrain'd from coming to And disabled any City, Town Corporate, Borough, Parish, or Place, to teach as aforesaid, or any other Person who shall not take and School. subscribe the said Oath, and duly frequent Divine Service establish'd by Law, shall teach any publick or private School, or take Boarders or Tablers that are taught and instructed by himself or any other, on pain of 40 l. for every Offence, to be recover'd and distributed as aforesaid. *Ibid.*

Provided, that any two Justices of Peace upon Oath Two Justices of Peace may made of any Offence against this Act, may commit the Offender without Bail or Mainprize, unless upon or before such Commitment he shall swear and subscribe the said Oath and Declaration. *Ibid.* commit Offenders.

Provided, that if any Person restrain'd by virtue of Proviso for this Act shall without Fraud be serv'd with a *Subpoena*, Persons sum- Warrant, or other Process, requiring his personal Appearance, his Obedience to such Writ, &c. shall not be con- mon'd by legal Process. sidered an Offence against this Act. *Ibid.*

If any Person of sixteen Years of Age or upwards, be- 22 Car. 2. c. 1. ing a Subject of this Realm, shall be present at any Assembly, Conventicle, or Meeting, under pretence of Exercise of Religion, (in other manner than according to the Conventicle, Liturgy) in England, Wales, or Berwick, at which Conventicle there shall be more than five Persons assembled besides those of the Household, if it be in a House where a Family inhabits, or if in a House, Field, or Place, where no Family inhabits; then if five Persons, or more, are so assembled, it shall be lawful for one, or more, Justice of the Peace of the County or Place where the Offence shall be committed, or the chief Magistrate of the Place, and they are hereby required, upon Proof of such Offence, either by Confession, or the Oath of two Witnesses, or by notorious Evidence of the Fact, to make Record of such Offence under their Hands and Seals; which Record shall be taken and adjudg'd to be a full Conviction of every such Offender, and thereupon the said Justice, &c. shall impose a Fine of 5 s. upon the Offender for such first Offence; which Record shall be certify'd at the next Quarter-Sessions of the County or Place where the Offence was committed. *Stat. 22 Car. 2. cap. 1.* On pain of 5 s.

And such Offender convicted in like manner a second Second Offence, shall incur the Pain of 10 s. which said Pains shall be levied by Distress and Sale of his Goods, or in case of Poverty, upon the Goods of any other Person who shall be then convicted of the like Offence at the said Conventicle, so as the Sum to be levied upon any one Person levied on any amount not to above 10 l. at any one Meeting: And every other of the Constable, Congregation.

Constable, Headborough, Tythingman, Churchwarden, or Overseer of the Poor, are hereby requir'd to levy the same, having receiv'd a Warrant from the said Justice, &c. so to do; the said Money to be deliver'd to the said Justice, &c. to be distributed by him, one Third to the Use of the Crown, to be paid to the High-Sheriff of the County at the Quarter-Sessions, and a Memorial shall be made thereof, which shall be a sufficient Discharge to the said Justice, &c. and a Charge on the Sheriff, which said Discharge and Charge shall be certify'd into the Exchequer together, and no Justice shall be accountable for the same in the Exchequer or elsewhere than in the Quarter-Sessions; another third Part shall go to the Poor where the Offence is committed; and the other Third to the Informer, and to such Person as the said Justice, &c. shall appoint, for their Diligence in the Discovery and dispersing of the said Conventicles. *Ibid.*

Forfeitures of And every Person who shall preach or teach in any such
 20 l. for Conventicle shall forfeit 20 l. for every such first Offence,
 preaching in to be levied on his Goods and Chattels as aforesaid: And
 a Conventicle. if the said Teacher convicted be a Stranger, and his Name
 and Habitation not known, or is fled, and cannot be
 found, or in the Judgment of the Justice, &c. thought

In Case of unable to pay, the said Justice is requir'd to levy the
 Poverty, &c. same by Warrant on the Goods and Chattels of any such
 to be levied Person who shall be present at the same Conventicle, to
 on any of the be dispos'd as aforesaid. *Ibid.*

Congregation. And every Person who shall wittingly and willingly
 Person suffer- suffer any such Conventicle to be held in his House, Out-
 ing a Conven- House, Barn, or Back-side, shall forfeit 20 l. to be levied
 ticle in his as aforesaid; and in case of Poverty, to be levied on the
 House forfeits Goods and Chattels of such Persons as shall be convicted
 20 l. in manner aforesaid, of being present at the same Con-
 venticle, to be dispos'd as aforesaid. *Ibid.*

Provided, that no Person shall be liable to pay above
 10 l. in regard of the Poverty of another. *Ibid.*

Appeal to the Provided, that where a Penalty charg'd upon any Of-
 Quarter-Ses- fender exceeds 10 s. it shall be lawful for him within one
 sions where Week after the Money paid or levied to appeal in Writing
 the Penalty is to the Quarter-Sessions, where the Justice, &c. who first
 above 10 s. convicted such Offender shall return the Money levied,
 and certify under his Hand and Seal the Evidences upon
 which the Conviction pass'd, with the whole Record
 whereupon such Offender may plead and have his Trial
 by a Jury; and if such Appellant shall not prosecute with
 Effect, or shall not be acquitted, or Judgment shall not
 pass for him, the Sessions shall give treble Costs, and no
 other Court shall meddle with any Cause of Appeal upon
 this

this Act, but it shall be finally determin'd in the Quarter-Sessions. *Ibid.*

Provided, that upon such Appeal, the Offender shall be Security to fore the Person before whom he be convicted, enter into a prosecute the Recognizance to prosecute the said Appeal with effect ; Appeal. which said Recognizance shall be certify'd to the next Quarter-Sessions. *Ibid.*

Provided, that every such Appeal shall be left with the Person before whom the Conviction is made, at the time of the making thereof. *Ibid.*

And the Justices of the Peace and Chief Magistrate re- Doors of Con-
spectively, or the respective Constables, by Warrant from venticles may
the said Justices, respectively may with what Force and be broke open.
Assistance they think fit, after refusal, break open and
enter any House or other Place where such Conventicle as
afore said shall be held, and take into Custody the Persons
there unlawfully assembled ; and the Lieutenants, or De-
puty-Lieutenants, or any Commission-Officer of the Mi-The Forces
litia or other his Majesty's Forces, with Troops or Com-are to assist
panies of Horse or Foot, and also the Sheriffs and other the Civil Ma-
Magistrates, jointly or severally, with such Assistance as gistrate in
they shall think fit, on Certificate from a Justice of Peace suppressing
or Chief Magistrate, of his Knowledge of such unlawful Conventicles.
Meeting ; and that he with such Assistance as he can get,
is not able to suppress and dissolve the same, shall repair
to the Place where it is held, and by the best means they
can, dissolve, dissipate, or prevent such unlawful Meetings,
and take into Custody so many of the Offenders as they
shall think fit. *Ibid.*

Provided that no Dwelling-House of a Peer where he, Pears Houses
or his Wife shall be then Resident, shall be search'd but by
Warrant from his Majesty under his Sign Manual, or in
the Presence of the Lieutenant, Deputy-Lieutenant, or
two Justices of Peace. *Quor. un. Ibid.*

And if any Constable, Headborough, Tythingman, Constables,
Church-Warden, or Overseer of the Poor, shall know or &c. neglecting
be credibly inform'd of such Meeting within his Precinct his Duty, fore-
and shall not give Information thereof to some Justice of seits 5 l.
Peace or Chief Magistrate, and endeavour the Conviction
of the Offender ; or if any Person call'd to the Aid of the
Constable, &c. shall omit the Performance of his Duty
in the Execution of this Act, he shall forfeit 5 l. to be
levied and dispos'd as afore said. And every Justice of
Peace, or Chief Magistrate, so neglecting his Duty, shall Justice of
forfeit 100 l. one Moiety to the Informer, to be recover'd Peace 100 l ;
by Action, Suit, Bill or Plaint, in the Courts of Westmin-
ster, wherein no Essoign, &c. shall lye. *Ibid.*

And if any Person be prosecuted for what he shall do in pursuance of this Act, otherwise than upon an Appeal, he may plead the general Issue, and give the special Matter in Evidence. And if the Plaintiff be Nonsuit, &c.

Treble Costs. the Defendant shall have treble Costs. *Ibid.*

**No Process
revers'd for
default in
Form.**

And this Act shall be construed most beneficially for the suppressing of Conventicles; and no Record, Warrant or Mittimus, or any proceedings thereupon, shall be revers'd or impeach'd for any default in Form. And if any Offender shall be an Inhabitant in another County or Corporation, or fly into another County or Corporation, the Justice, &c. before whom he shall be convicted, shall certify the same under his Hand and Seal to any Justice of Peace or Chief Magistrate of such other County or Corporation, who is requir'd to levy the Pains in this Act upon the Goods and Chattels of such Offender.

**Offender fly-
ing into ano-
ther County.**

**Prosecution
within three
Months.**

Provided that no Person be punish'd unless prosecuted within three Months after the Offence: And no Person punish'd by this Act shall be punish'd by any other Law. *Ibid.*

London.

Provided that every Alderman of London shall have the same Power within London and the Liberties thereof, for convicting and punishing Offenders, as any Justice of Peace hath in any County of England, and shall be subject to the same Pains for not doing his Duty. *Ibid.*

Feme-Covert.

Provided that if any Offender be a Feme-Covert, the said Penalties of 5 s. and 10 s. shall be levied upon the Goods and Chattels of the Husband. *Ibid.*

Peers.

Provided that no Peer shall be attach'd and imprison'd by Virtue of this Act. *Ibid.*

Provided that this Act shall not invalidate his Majesty's Supremacy in Ecclesiastical Affairs. *Ibid.*

1 W. & M. c.

Neither the Statute made in the 2 Eliz. cap. 1. nor the 18. 29 Eliz. cap. 6. nor that Branch of the Statute of 1 Eliz.

No Dissenter

cap. 2. whereby all Persons are requir'd to come to Church,

who shall take

nor the Statute of the 3 Jac. 1. cap. 4. or the 3 Jac. 1.

the Oaths and c. 5.

or any other Law or Statute made against Papists or

make the De-

Popish Recusants, except the 25 Car. 2. cap. 2. and except

claration in

the 30 Car. 2. cap. 1. shall be construed to extend to any

the 30 Car. 2.

Person dissenting from the Church of England that shall take

c. 1. against

the Oaths mentioned in 1 W. & M. c. 1. and shall make and

Transubstan-

subscribe the Declaration in the 30 Car. 2. cap. 1. which

tiation, shall

Oaths and Declaration the Justices of Peace at their gene-

be liable to

ral Sessions are requir'd to administer to such Persons as

the Penal-

shall offer themselves to take, make and subscribe the

Laws against

same, and thereof to keep a Register. And no Person shall

Recusants.

pay any Fee above 6 d. for his Entry of his taking the said

Oaths, &c. and 6 d. more for a Certificate of the same,

to be made out and sign'd by the Officer of the said Court.
Stat. 1 W. & M. cap. 18.

And Persons qualifying themselves as aforesaid, shall not be liable to the Pains and Forfeitures in the 35 *Eliz. cap. 1.* for retaining the Queen's Subjects in their due Obedience; or the 22 *Car. 2. cap. 1.* for preventing seditious Conventicles; nor shall such Persons be liable to be prosecuted in any Ecclesiastical Court for their Nonconformity. *Ibid.*

Provided, that if such Nonconformists shall lock or bar the Doors where they meet, they shall be liable to all the Laws before recited for such their meeting, notwithstanding their qualifying themselves as aforesaid. *Ibid.*

Meetings to be open.

Provided that this Act shall not exempt Persons from paying of Tythes, or other Duties to the Church or Minister, or from any Prosecution for the same. *Ibid.*

Tythes to be paid.

And if any Person be chosen or appointed High Constable, or to any Parochial or Ward Office, and scruple to take the Oaths requir'd, he may execute such Office by a sufficient Deputy that shall comply with the Laws. *Ibid.*

Dissenters may execute a Parish Office by a Deputy.

Provided such Deputy be approv'd by the Person who should have approv'd of the Officer himself. *Ibid.*

And no dissenting Preacher or Teacher, who shall make the said Declaration, and take the Oaths as aforesaid, and subscribe the Thirty Nine Articles, except the 34, 35 and 36th, and these Words in the 20th, [*The Church hath Power to decree Rites and Ceremonies, and Authority in Controversies in Faith. And yet.*] shall be liable to the Penalties in the Oaths, &c. 17 *Car. 2.* for restraining Nonconformists inhabiting Corporations, nor to the Penalties of the 22 *Car. 2.* for Preaching at Meetings, or to the Penalty of 100 *l.* in the Act of Uniformity the 13 & 14 *Car. 2.* *Ibid.*

Dissenting-Teachers subscribing the 39 Articles & taking the Oaths, &c. indemnify'd.

Provided the taking the said Oaths and Declaration, and subscribing the said Articles, be recorded at the Sessions, for which 6 *d.* only shall be paid. *Ibid.*

And provided such Teacher do not preach in any Place with the Doors lock'd, barr'd or bolted. *Ibid.*

And if such Teachers as scruple Infant-Baptism, shall take the said Oath and make the Declaration aforesaid, and subscribe the Thirty Nine Articles, except as aforesaid, and except part of the 27th Article touching Infant-Baptism, they shall also enjoy all the Benefits of this Act as any other dissenting Preacher might. *Ibid.*

Dissenting-

And all dissenting Teachers shall also be exempted from serving on Juries, or any Parochial or Ward Office, or to serve on any other Office in any Hundred, Division, or Wapentake. *Ib.*

Teachers not serving on Juries or Parish-And Offices.

And if any Person be prosecuted for what he shall do in pursuance of this Act, otherwise than upon an Appeal, he may plead the general Issue, and give the special Matter in Evidence. And if the Plaintiff be Nonsuit, &c. the Defendant shall have treble Costs. *Ibid.*

Treble Costs.

No Process
revers'd for
default in
Form.

Offender fly-
ing into ano-
ther County.

And this Act shall be construed most beneficially for the suppressing of Conventicles; and no Record, Warrant or Mittimus, or any proceedings thereupon, shall be revers'd or impeach'd for any default in Form. And if any Offender shall be an Inhabitant in another County or Corporation, or fly into another County or Corporation, the Justice, &c. before whom he shall be convicted, shall certify the same under his Hand and Seal to any Justice of Peace or Chief Magistrate of such other County or Corporation, who is requir'd to levy the Pains in this Act upon the Goods and Chattels of such Offender.

Prosecution
within three
Months.

Provided that no Person be punish'd unless prosecuted within three Months after the Offence: And no Person punish'd by this Act shall be punish'd by any other Law. *Ibid.*

London.

Provided that every Alderman of *London* shall have the same Power within *London* and the Liberties thereof, for convicting and punishing Offenders, as any Justice of Peace hath in any County of *England*, and shall be subject to the same Pains for not doing his Duty. *Ibid.*

Feme-Covert.

Provided that if any Offender be a Feme-Covert, the said Penalties of 5 s. and 10 s. shall be levied upon the Goods and Chattels of the Husband. *Ibid.*

Peers.

Provided that no Peer shall be attach'd and imprison'd by Virtue of this Act. *Ibid.*

Provided that this Act shall not invalidate his Majesty's Supremacy in Ecclesiastical Affairs. *Ibid.*

1 *W. & M. c.*
18.

No Dissenter
who shall take
the Oaths and
make the De-
claration in
the 30 *Car. 2.*
c. 1. against
Transubstan-
tiation, shall
be liable to
the Penal-
Laws against
Recusants.

Neither the Statute made in the 2 *Eliz. cap. 1.* nor the 29 *Eliz. cap. 6.* nor that Branch of the Statute of 1 *Eliz. cap. 2.* whereby all Persons are requir'd to come to Church, nor the Statute of the 3 *Jac. 1. cap. 4.* or the 3 *Jac. 1. c. 5.* or any other Law or Statute made against Papists or Popish Recusants, except the 25 *Car. 2. cap. 2.* and except the 30 *Car. 2. cap. 1.* shall be construed to extend to any Person dissenting from the Church of *England* that shall take the Oaths mentioned in 1 *W. & M. c. 1.* and shall make and subscribe the Declaration in the 30 *Car. 2. cap. 1.* which the Justices of Peace at their general Sessions are requir'd to administer to such Persons as shall offer themselves to take, make and subscribe the same, and thereof to keep a Register. And no Person shall pay any Fee above 6 d. for his Entry of his taking the said Oaths, &c. and 6 d. more for a Certificate of the same,

to be made out and sign'd by the Officer of the said Court.
Stat. 1 W. & M. cap. 18.

And Persons qualifying themselves as aforesaid, shall not be liable to the Pains and Forfeitures in the 35 *Eliz. cap. 1.* for retaining the Queen's Subjects in their due Obedience; or the 22 *Car. 2. cap. 1.* for preventing seditious Conventicles; nor shall such Persons be liable to be prosecuted in any Ecclesiastical Court for their Nonconformity. *Ibid.*

Provided, that if such Nonconformists shall lock or bar the Doors where they meet, they shall be liable to all the Laws before recited for such their meeting, notwithstanding their qualifying themselves as aforesaid. *Ibid.*

Meetings to be open.

Provided that this Act shall not exempt Persons from paying of Tythes, or other Duties to the Church or Minister, or from any Prosecution for the same. *Ibid.*

Tythes to be paid.

And if any Person be chosen or appointed High Constable, or to any Parochial or Ward Office, and scruple to take the Oaths requir'd, he may execute such Office by a sufficient Deputy that shall comply with the Laws. *Ibid.*

Dissenters may execute a Parish Office by a Deputy.

Provided such Deputy be approv'd by the Person who should have approv'd of the Officer himself. *Ibid.*

And no dissenting Preacher or Teacher, who shall make the said Declaration, and take the Oaths as aforesaid, and subscribe the Thirty Nine Articles, except the 34, 35 and 36th, and these Words in the 20th, [*The Church hath Power to decree Rites and Ceremonies, and Authority in Controversies in Faith. And yet.*] shall be liable to the Penalties in the 17 *Car. 2.* for restraining Nonconformists inhabiting Corporations, nor to the Penalties of the 22 *Car. 2.* for Preaching at Meetings, or to the Penalty of 100 *l.* in the Act of Uniformity the 13 & 14 *Car. 2.* *Ibid.*

Dissenting-Teachers subscribing the 39 Articles & taking the Oaths, &c. indemnify'd.

Provided the taking the said Oaths and Declaration, and subscribing the said Articles, be recorded at the Sessions, for which 6 *d.* only shall be paid. *Ibid.*

And provided such Teacher do not preach in any Place with the Doors lock'd, barr'd or bolted. *Ibid.*

And if such Teachers as scruple Infant-Baptism, shall take the said Oath and make the Declaration aforesaid, and subscribe the Thirty Nine Articles, except as aforesaid, and except part of the 27th Article touching Infant-Baptism, they shall also enjoy all the Benefits of this Act as any other dissenting Preacher might. *Ibid.*

Anahaptist-Teachers.

And all dissenting Teachers shall also be exempted from serving on Juries, or any Parochial or Ward Office, or to serve on Ju- other Office in any Hundred, Division, or Wapentake. *Ib.*

Dissenting-Teachers not serving on Juries or Parish-And Offices.

Dissenter refusing the Oaths, liable to the Pains of a Recusant Convict. And one Justice of Peace may require any Dissenter to make the Declaration, and take the said Oaths, or the Declaration of Fidelity hereafter mention'd; and on refusal thereof, he shall commit such Dissenter to Goal without Bail, and certify his Name to the next general Quarter-Sessions; and in case of a second refusal at the Sessions, it shall be recorded there, and he shall be taken for and liable to all the Pains and Forfeitures of a Popish Recusant convict. *Ibid.*

Quakers Declaration of Fidelity.

And those Dissenters who scruple taking any Oath, shall make and subscribe the aforesaid Declaration, and this Declaration of Fidelity following, viz.

I A. B. do sincerely promise and solemnly declare before God and the World, that I will be true and faithful to King William and Queen Mary. And I do solemnly profess and declare, that I do from my Heart abhor, detest, and renounce as impious and heretical that damnable Doctrine and Position, that Princes excommunicated or deprived by the Pope, or any Authority of the See of Rome, may be deposed or murdered by their Subjects, or any other whatsoever. And I do declare, that no foreign Prince, Person, Prelate, State, or Potentate, hath or ought to have any Power, Jurisdiction, Superiority, Preeminence or Authority Ecclesiastical or Spiritual within this Realm.

And shall subscribe this Profession of their Christian Faith, viz.

Quakers Creed.

I A. B. profess Faith in God the Father, and in Jesus Christ his eternal Son the true God, and in the Holy Spirit, one God blessed for evermore; and do acknowledge the Holy Scriptures of the Old and New Testament to be given by divine Inspiration.

The repeating whereof, &c. exempts him from the Penal-Laws.

Which Declarations and Subscriptions shall be recorded at the Sessions, and the Person making them shall be exempted from all the Penalties of the aforesaid Acts against Recusants and Nonconformists, and from the Penalties of the 5 Eliz. c. 1. for assurance of the Queen's Power over all Estates; and from the Pains in the 13 & 14 Car. c. 1. for preventing Mischiefs that may arise by Quakers, &c. and shall enjoy all the Benefits that any other Dissenter may by this Act. *Ibid.*

Dissenter refusing the Oaths, to produce a Certificate of his being a Dissenter.

Provided, that if any Person shall refuse to take the said Oaths when tender'd by a Justice of Peace, he shall not be admitted to make the said two Declarations (tho' requir'd so to do either by a Justice of Peace or the Sessions) unless he can within thirty one Days after the tender of the Declarations to him, produce two sufficient Protestant Witnesses, who will make Oath that they believe him to be a Protestant-Dissenter; or a Certificate under the Hands of four Members of the Church of England, or who have taken the Oaths and subscrib'd the Declara-

tion of the 30 Car. 2. and shall produce a Certificate under the Hands and Seals of six sufficient Men of the Congregation he belongs to, owning him for one of them. *Ib.*

And until such Certificate under the Hands of six of Or to be com- the Congregation be produc'd, and two Protestants come mitted. to attest his being a Protestant-Dissenter; or a Certificate under the Hands of four Protestants be produced as afore- said, the Justice shall take a Recognizance of 50 l. with two Sureties for his producing the same; and if he cannot give such Security, he shall be committed to Prison till he has produc'd such Certificates, or two Witnesses, as afore- said. *Ibid.*

Provided, that all the Laws requiring Persons to frequent Laws for co- divine Service on Sundays, shall be in force against all ming to such Persons as do not come to some dissenting Meeting. Church still *Ibid.* in force a-

Provided, that this Act do not extend to give ease to gainst those Papists or Popish Recusants, or to those who shall preach who do not or write against the Doctrine of the Trinity as declar'd ingo to Meet- the Thirty Nine Articles. *Ibid.* ings,

Provided, that if any Person shall of purpose malici- And against- ously or contemptuously disturb any Congregation assem- Papists and So- bled for divine Worship (whether of the Church or Dis- cinians. senters) or misuse any Preacher or Teacher, such Person Penalty of shall enter into a Recognizance of 50 l. with two Sureties 20 l. for di- to appear at the next Quarter-Sessions; and in default of sturbing a such Sureties, shall stand committed till the Sessions; and Preacher. if he be convicted there, he shall pay 20 l. to the Use of their Majesties. *Ibid.*

Provided, that no Congregation shall be permitted by Meeting- this Act until the place of Meeting be certify'd to the House to Bishop or the Archdeacon, or to the Quarter-Sessions, and be register'd. register'd. And the Register or Clerk of the Peace is re- quir'd to make a Certificate thereof upon demand, for which he shall take but 6 d. *Ibid.*

After the 4th of May, 1696. any Quaker who shall be 7 & 8 W. 3. requir'd on any lawful occasion to take an Oath, shall in- c. 34. stead of the usual Form, be permitted to make his so- Affirmation solemn Affirmation in these Words. Stat. 7 & 8 W. 3. of the Qua- cap. 34. kers instead of

I A. B. do declare in the Presence of Almighty God the Wit- an Oath. ness of the Truth of what I say. Ibid.

Which solemn Affirmation shall be of the same Force and Effect in all Courts of Justice and other Places where by Law an Oath is requir'd, as if such Quaker had taken an Oath in the usual Form. *Ibid.*

And if such Quaker affirm any thing, which if the same False Affirma- had been in the usual Form would have amounted to wil- tion incurs

the Pains of Perjury. ful and corrupt Perjury, he shall incur the same Pains and Forfeitures as are inflicted on Persons convicted of wilful and corrupt Perjury. *Ibid.*

Two Justices of Peace may compel a Quaker to pay his Tythes and Church Dues not exceeding 10 l. Where any Quaker shall refuse to pay or compound for his great or small Tythes, or to pay any Church Rates, the two next Justices of Peace, (other than the Patron or Person interested) upon complaint of the Person entituled to receive or collect them, shall by Warrant under their Hands and Seals, convene such Quaker before them, and examine upon Oath the Truth of the said complaint, and ascertain what is due; and by Order under their Hands and Seals, shall direct the payment thereof, so as the Sum order'd do not exceed 10 l. And upon refusal of such Quaker to pay, it shall be lawful for any one of the said Justices by Warrant under his Hand and Seal, to levy the Money by distress and sale of the Goods of the Offender, his Executors or Administrators, rendring the overplus (the Charges of the Distress as allow'd by the Justices being first deducted) to the Owner. *Ibid.*

Appeal to the Quarter-Sessions. And any Person aggriev'd by the Judgment of the said two Justices, may appeal to the next general Quarter-Sessions, where the Matter shall be determin'd by a Majority of the Sessions, and if they confirm the Judgment of the two Justices, they shall decree the same, and proceed to give Costs against the Appellant by distress and sale. And no Proceedings or Judgment had by virtue of this Act shall be remov'd by *Certiorari*, unless the Title of such Tythes come in Question. *Ibid.*

No *Certiorari*, unless the Title in Question. No Distress till the Appeal be determin'd. Provided, that in case of an Appeal, no Warrant of Distress shall be granted until the Appeal be determin'd. *Ibid.*

Quaker still disabled to be a Witness, Juryman, or to bear Office. Provided that no Quaker, or reputed Quaker, shall by Virtue hereof be permitted to give Evidence in any Criminal Causes, or serve on any Juries, or bear any Office or Place of Profit in the Government. *Ibid.*

To be in force for seven Years, and to the end of the next Session of Parliament. *Ibid.*

10 Ann. c. 2. Officers Civil or Military going to Conventicles, forfeit 40 l. If any Person or Persons after the 25th of March, 1712. (whether Peers or Commoners) who shall have any Office Civil or Military, or receive any Pay, Salary, Fee or Wages by Patent or Grant from the Crown, or shall have any Command or Place of Trust under the Crown, or by Authority deriv'd from it in England, Wales, or Berwick, or in the Navy, or in the Islands of Jersey or Guernsey, or shall be of her Majesty's Household; or if any Mayor, Alderman, Recorder, Bailiff, Town Clerk, Common-Council-Man, or other Persons bearing any Office of Magistracy, or Place of Trust, or other Employment relating to

to the Government of any City, Corporation, Borough, Cinque-Port, or other Port Town in *England, &c.* who by the 13 *Car. 2. cap. 1.* and 25 *Car. 2. cap. 2.* or either of them, are oblig'd to receive the Sacrament according to the usage of the Church of *England*, shall after their admission into their respective Offices, Employments, Commands, or Place of Trust as aforesaid, during their continuance therein, knowingly or willingly resort to any Conventicle in *England, &c.* for the Exercise of Religion in other manner than according to the Liturgy of the Church of *England*, at which Conventicle there shall be Ten or more Persons assembled besides those of the same Household, if it be in a House inhabited; or if it be in a House or Place where there is no Family inhabiting, then where Ten such Persons are so assembled as aforesaid, or shall knowingly and willingly be present at any such Meeting, altho' the Liturgy be there us'd, where her Majesty, the Princess *Sophia*, or such other as shall be appointed to be pray'd for, shall not be pray'd for in express Words according to the Liturgy, shall forfeit 40 *l.* to him that will sue for the same, by Action of Debt, Bill, Plaint or Information in the Courts at *Westminster*, where no Essoign, &c. shall be allow'd. *Stat. 10 Ann. cap. 2.*

And every Person convicted in any Action, or upon any And disabled Information, Presentment or Indictment in the Courts at to bear Office, *Westminster*, or at the Assizes, shall be disabled to hold &c. such Office or Employment, or to receive any Advantage by them, or of any Grant as aforesaid, and be disabled to bear any Office or Employment whatsoever in *England, Wales, Berwick, Jersey or Guernsey.* *Ibid.*

Persons con-
conform to the Church of *England* for one Year without forming, ca-
having been present at such Conventicle, and receiv'd the pable again.
Sacrament according to the Church of *England* at least
three times in the Year, he shall be capable of the Grant
of the Offices and Employments aforesaid. Provided,
that at the next Term after his admission into such Office
or Employment, he make Oath in one of the Courts at
Westminster, or at the next Quarter-Sessions where he shall
reside, between Nine and Twelve in the Forenoon, that
he hath so conform'd for one Year without being present
at any Conventicle, and hath receiv'd the Sacrament at
least three times in the said Year. (Which Oath shall be
there recorded. *Ibid.*

Information
Provided no Person be punish'd by this Act unless Oath to be within
be made of such Offence before a Judge or Justice of ten Days.
Peace within Ten Day after the Offence, and the Offender
be prosecuted within Three Months after the Offence;
and

and none shall be convicted but by the Oaths of Two Witnesses. *Ibid.*

Provided this Act do not extend to make void any Office of Inheritance, so as the Person having such Office do substitute a Deputy to exercise the same, until he himself shall conform as aforesaid. *Ibid.*

Toleration confirm'd.

And the Toleration granted to Protestant Dissenters by the 1 W. & M. c. 18, is hereby ratify'd and confirm'd. *Ibid.*

Dissenter who has not qualify'd himself, being prosecuted, shall be discharged on his taking the Oaths.

And it is declar'd, That if any Dissenter or dissenting Teacher, who hath not qualify'd himself according to the said Statute, shall be prosecuted upon any penal Statute from which Protestant Dissenters are exempted by that Act, shall during such prosecution, make and subscribe the Oaths and Declaration therein mention'd; or being a Quaker, shall make and subscribe the said Declaration of Fidelity, and subscribe their Profession of the Christian Belief according to the said Act, before any two Justices of the Peace, he shall be intitled to the Benefit of the said Act as if he had qualify'd himself within the Time thereby prescribed, and shall be discharged from all Pains and Forfeitures incurr'd by force of any of the said penal Statutes. *Ibid.*

Preacher qualify'd in one County may preach in another.

And every such Preacher or Teacher duly qualify'd according to the said Act, is hereby allow'd to officiate in any Congregation, tho' the same be not in the County where he was so qualify'd. Provided the Place of Meeting hath been certify'd and register'd according to the said Act. But such Preacher shall, if requir'd, produce a Certificate from the Clerk of the Peace where he so qualify'd himself, and shall also before any Justice of Peace where he shall officiate, make and subscribe such Declaration, and take such Oaths as are mention'd in the said Act, if thereto requir'd. *Ibid.*

12 Ann. c. 7. Nonconformist teaching School, &c. to be imprison'd three Months.

Every Person who shall after the 1st of August, 1714. keep any publick or private School or Seminary, or teach and instruct Youth as Tutor or School-Master, in England, Wales, or Berwick, before he hath subscrib'd the following Declaration contain'd in the 13 & 14 Car. 2. cap. 1. viz. *I A. B. do declare that I will conform to the Liturgy of the Church of England as it is now by Law establish'd.* And shall have obtain'd a License from the Bishop or Ordinary, for which he shall pay 1 s. and no more, besides the Queen's Duty; and shall be convicted thereof upon Information, Presentment, or Indictment, in the Courts of Westminster, or at the Assizes before Justices of Oyer and Terminer, he shall be committed to the common Goal for three

three Months without Bail or Mainprize. *Stat. 12 Anne, cap. 7.*

Provided that no Licence be granted by any Bishop, &c. unless the Person requiring it, produce a Certificate of his having receiv'd the Sacrament in some Parish-Church within one Year before, under the Hand of the Minister and one of the Church-Wardens; nor until he hath taken and subscrib'd the Oaths of Allegiance, Supremacy and Abjuration, and made and subscrib'd the Declaration against Transubstantiation contain'd in the 25 *Car. 2. c. 2.* entituled, *An Act for preventing Dangers which may happen from Popish Recusants*, before the said Bishop, &c. who are requir'd to file such Certificates, and keep a Register of the same, and of the taking and subscribing such Oaths and Declaration. *Ibid.*

And any Person who shall have obtain'd such Licence in manner aforesaid, and who shall at any time after during his keeping any School or Seminary, or instructing Youth as Tutor or School-Master, knowingly or willingly be present at any such Conventicle, or at any Assembly for the Exercise of Religion, altho' the Liturgy be there us'd, where her Majesty and the Elector of *Brunswick*, &c. shall not be pray'd for in exprefs Words according to the Liturgy, shall be liable to the Penalties of this Act, and be incapable of keeping any School or Seminary, or to instruct Youth as aforesaid. And if any Person licens'd as aforesaid, shall teach any other than the Church Catechism, his Licence shall be void, and he shall be liable to the Penalties in this Act. *Ibid.*

Provided none be punish'd twice for the same Offence. *Ibid.*

Provided, that where any Person shall be Prosecuted by this Act, he shall not be prosecuted for the same Offence in any of the Courts aforesaid whilst such former prosecution is depending; and any Person so doubly prosecuted may plead such former prosecution pending, or Judgment thereupon given; the said pleader first making Oath that the said prior prosecution was not commenc'd or carried on by his means, consent or procurement, or by the fraud or collusion of any other Person to his knowledge or belief. *Ibid.*

Provided this Act do not extend to any Tutor in the Universities, or to any of the Nobility, as to the teaching their Children or Grandchildren only in their Families. Provided that the Tutor teaching in such noble Family do in every respect qualify himself according to this Act, except in taking a Licence from the Bishop. *Ibid.*

Pro-

Foreign
Churches,
Offender con-
forming, re-
stor'd.

Provided, that the Pains in this Act do not extend to any Foreigner or Alien of the Reform'd Churches allow'd in *England*, for instructing the Children of any such Foreigners or Alien only. *Ibid.*

Provided, that if any Person who hath been convicted, and made incapable to teach Youth as aforesaid, shall afterwards conform for one Year without having been present at any Conventicle as aforesaid, and receiv'd the Sacrament three times in that Year, he shall be again capable of a Licence to teach School, &c. he performing all that is requisite thereto by this Act. Provided, that after such Conformity, he shall the next Term after his being admitted to teach as aforesaid, make Oath in the Courts at *Westminster*, or at the next Quarter-Sessions, that he hath so conform'd for one Year without being present at a Conventicle as aforesaid, and that he hath receiv'd the Sacrament at least three times in the Year, which Oath shall be there recorded. *Ibid.*

Provided that this Act do not extend to any Person who shall instruct Youth in Reading, Writing, Arithmetick, or Mathematical Learning, only so far as such Mathematical Learning relates to Navigation, or any Mechanical Art only, and so as such Reading, &c. be taught only in the *English* Tongue. *Ibid.*

Extended to
Ireland.

And it is enacted, That all the Remedies, Provisions and Clauses in this Act shall extend to *Ireland* as fully as if *Ireland* had been expressly nam'd in every Clause. *Id.*

1 Geo. c. 6.

Quakers Af-
firmation per-
petual.

The Act of 7 & 8 W. 3. That the solemn Affirmation and Declaration of the People call'd Quakers shall be accepted instead of an Oath in the usual Form, is made perpetual. And it is enacted, That the Remedy thereby provided for the Recovery of Tythes and Church Rates should be extended, and might be us'd for the Recovery of any Tythes or Rates, or any customary or other Rights, Dues, or Payments belonging to any Church or Chapel which by Law and Custom ought to be paid for the Stipend or Maintenance of any Minister or Curate officiating in any Church or Chapel; and two or more Justices of the Peace, other than the Patron or Person interested in the said Tythes, upon complaint of any Parson, Vicar, Curate, Farmer, or Proprietor of such Tythes, or of any Church-Warden or other Person who ought to have or collect the same, are requir'd to summon in writing under their Hands and Seals, any Quaker against whom such Complaint shall be made, and upon his Appearance, and in default of Appearance, the said Summons being approv'd upon Oath, to hear and determine the said Complaint, and make such Order as in the said Act is directed, and to order

Church Dues
to be levied,
By two Justi-
ces.

order Costs, not exceeding 10 s. which order shall be executed, and on Appeal may be revers'd or affirm'd by the Quarter-Sessions, with such Costs, and in like manner as by the said Act is limited; and shall not be remov'd into any other Court, unless the Right of such Tythes, &c. be in question. Stat. 1 Geo. c. 6.

And the effect of the Abjuration Oath is thereby requir'd to be taken by every Quaker in the Words therein specify'd; but these are alter'd by 8 Geo. c. 6. which see afterwards. Ibid.

And it is provided, that so much of this Act as relates to the Affirmations of the Quakers, shall extend to Scotland and to the Plantations, to continue for five Years, and to the end of the next Sessions of Parliament. Ibid.

The Act of 10 Ann. cap. 2. from the beginning thereof to these Words (*And it is hereby further enacted and declar'd by the Authority aforesaid, That the Toleration granted to Protestant Dissenters:*) And also one Act made in the 12th Year of the Reign of Queen Anne, cap. 7. entituled *An Act to prevent the Growth of Schism, &c.* are hereby repeal'd. Stat. 5 Geo. cap. 4.

Provided, that if any Mayor, Bailiff, or other Magistrate in England, Wales, or Berwick, or the Isles of Jersey or Guernsey, shall knowingly or wilfully be present at any publick Meeting for religious Worship, other than of the Church of England, in the Gown or other peculiar Habit, or attended with the Ensigns of his Office, being thereof convicted, shall be disabled to hold such Office or Employment, and be adjudg'd incapable to bear any publick Office or Employment whatever. Ibid.

In all Cases where any Quaker is requir'd or permitted to make and subscribe the Declaration of Fidelity prescrib'd by the 1 W. & M. cap. 18. or to make the solemn Affirmation or Declaration prescrib'd by 7 & 8 W. 3. c. 34. or to take the Effect of the Abjuration Oath prescrib'd by 1 Geo. cap. 6.

Every such Quaker shall instead of the said first mention'd Declaration of Fidelity, make and subscribe a Declaration of Fidelity in the following Words, viz.

I A. B. do solemnly and sincerely promise and declare, that I will be true and faithful to King George; and do solemnly, sincerely and truly profess, testify and declare, that I do from my Heart abhor, detest and renounce as Impious and Heretical that wicked Doctrine and Position, That Princes excommunicated or deprived by the Pope, or any Authority of the See of Rome, may be depos'd or murder'd by their Subjects or any other whatsoever. And I do declare, that no foreign Prince, Person, Prelate, State, or Potentate, hath or ought to have any Power, Jurisdiction, Superiority,

Extended to Scotland and the Plantations.

5 Geo. c. 4. Occasional and Schism Bills repeal'd.

8 Geo. c. 6. Declaration of Fidelity and Affirmation to be taken by the Quakers instead of the Oaths.

Declaration.

periority, Preeminence or Authority Ecclesiastical or Spiritual within this Realm.

And instead of the solemn Affirmation prescrib'd by the said Act of 7 & 8 W. 3. shall make the solemn Declaration or Affirmation following, viz.

Affirmation.

I A. B. do solemnly, sincerely, and truly declare and affirm.

And instead of the Form prescrib'd by the said Act of 1 Geo. for the Effect of the Abjuration Oath, shall take the Effect thereof in the following Words.

Effect of the Abjuration Oath to be taken.

I A. B. do solemnly, sincerely and truly acknowledge, profess, testify and declare, that King George is lawful and rightful King of this Realm, and of all other his Dominions and Countries thereunto belonging; and I do solemnly and sincerely declare, That I do believe the Person pretended to be the Prince of Wales during the Life of the late King James, and since his decease pretending to be, and taking upon himself the Stile and Title of King of England, by the Name of James the Third, or of Scotland by the Name of James the Eighth, or the Stile and Title of King of Great Britain, hath not any Right or Title whatsoever to the Crown of this Realm, nor any other the Dominions thereunto belonging; and I do renounce and refuse any Allegiance or Obedience to him. And I do solemnly promise that I will be true and faithful, and bear true Allegiance to King George, and to him will be faithful against all traiterous Conspiracies and Attempts whatsoever which shall be made against his Person, Crown or Dignity. And I will do my best Endeavours to disclose and make known to King George, and his Successors, all Treasons and traiterous Conspiracies which I shall know to be made against him or any of them. And I will be true and faithful to the Succession of the Crown against him the said James and all other Persons whatsoever, as the same is and stands settled by an Act entituled, An Act declaring the Rights and Liberties of the Subject, and settling the Succession of the Crown to the late Queen Anne and the Heirs of her Body being Protestants; and as the same by one other Act entituled, An Act for the further Limitation of the Crown, and better securing the Rights and Liberties of the Subject, is and stands settled and intail'd, after the decease of the said late Queen, and for default of Issue of the said late Queen, to the late Princess Sophia, Electress and Dutches Dowager of Hanover, and the Heirs of her Body being Protestants. And all these things I do plainly and sincerely acknowledge, promise and declare according to these express Words by me spoken, and according to the plain and common Sense and Understanding of the same Words, without any Equivocation, mental Evasion, or secret Reservation whatsoever. And I do make this Recognition, Acknowledgment, Renunciation and promise, heartily, willingly and truly.

And all Persons authoriz'd to administer the said former Declaration and solemn Affirmation, &c. are requir'd

to administer and tender the Declaration, &c. specified in this Act. *Ibid.*

And it is enacted, That the Declaration of Fidelity To be of the and solemn Affirmation, or Declaration and the Effect of same Effect as the Abjuration Oath appointed by this Act, shall be of the the former same Force and Effect, and no other, in all Courts of Affirmation, Justice, and elsewhere, as if such Quaker had made and &c. subscrib'd the Declaration of Fidelity, or had made the solemn Affirmation or Declaration, or had taken the Effect of the Abjuration Oath in the respective Forms appointed by the said recited Acts. *Ibid.*

And if any Person making such Affirmation or Decla-Quakers affirmation as is appointed by this Act instead of that pre-ming falsely, scrib'd by 7 & 8 W. 3. shall be lawtully convicted of wilful, incur the false and corrupt affirming any thing, which, if sworn, Pains inflicted would have amounted to wilful and corrupt Perjury, Such on Perjury. Offender shall incur the same Pains and Forfeitures as are by Law inflicted on Persons convicted of wilful and corrupt Perjury. *Ib.*

Provided, that all Clauses contain'd in the said recited Acts not hereby expressly alter'd or repeal'd, shall be of the same Force as they were before the making this Act. *Ibid.*

READINGS.

Upon the 1 Eliz. cap. 2. It is held, that if a One need not Man do not resort to the Church in the Parish go to his Parish where he dwelleth, or to the Chapel of Ease^{ish} Church. whereunto his Place of Abode belongs, yet if he goes to that Church or Chapel to which he has been accusom'd to resort, it is sufficient to satisfy the Intent of that Statute. 1 Bulst. 159. And altho' the Words of the Statute be in the Disjunctive, viz. That he shall abide there during the Time of Common-Prayer, Preaching, or other Service of God, yet they ought to be taken Con- But must continue and behave decently till Sermon ended. junctively, and the Party ought not to depart when the Prayers are ended if there be a Sermon, but must continue there the whole Time. Godb. 148. Manno's Case. And if he does abide there, he may be liable to the Penalty, if he do not behave himself devoutly, orderly, and decently; for if he walk or talk in the Church during the Service, he may be punish'd as if he was absent.

The

The Ordinary, or Ecclesiastical Judge, cannot by the 1 *Eliz. cap. 2.* legally punish any Man for not coming to the Church of that Parish where he Inhabitants, if he goeth to any other; altho' he sheweth not any reasonable Let: For it shall be a good Plea for the Party to say, that this is not his Parish-Church, but that he hath us'd to frequent another Church, and did resort thereunto. And if the Ecclesiastical Court will not receive this Plea, the Party shall have a Prohibition: For the Spiritual Court hath no Power to judge what shall be said a Man's Parish-Church. And so it was resolv'd by the whole Court of King's Bench. *Trin. 9. Eliz. 1. Bull. 159.* Nor can the Spiritual Court try the Limits or Bounds of Parishes, but they shall be try'd by the Common Law. 13 *Cok. 17.*

Pain of 20 l.
per Month re-
cover'd, tho'
the Party was
sick part of
the time.

The Month in the 23 *Eliz. cap. 1.* shall contain but Twenty Eight Days. And in an Information brought by one *Parker, qui tam, &c.* against Sir *John Curson* and his Wife, for the Recusancy of the Wife; for that the said Feme being above the Age of sixteen Years from the 10th of September, 15 *Jac.* unto the 9th of September, 16 *Jac.* did not repair to any Church; and therefore for Eleven Months he demanded 220 l. The Defendants appear'd, and the Record was enter'd *Et predict' Johannes Curson, & Magdalena Veniunt, & predicta Magdalena, dicit quod ipsa non est inde Culpabilis. & de hoc pponit se, super Patriam & Attornatus Domini Regis similiter;* which being tried at the Bar, it was prov'd that she was sick for a great part of the Time, and thereby thought to have excus'd herself; yet forasmuch as it was alledg'd, that she was a Recusant both before and after, it was said by the Court, that it shall not excuse her, for it shall be intended that she obstinately forbore during that time, &c. wherefore she was found Guilty for all the Time. And it was afterward mov'd in Arrest of Judgment, that an Information lies not against Baron and Feme for the Recusancy of the Feme to recover 20 l. the Month: For the Statute of 7 *Jac. cap. 6.* appoints, That if a Feme-Covert be convicted,

visited, she shall be committed to Prison; and if ^{20 l. per} the Husband redeem her out of Prison, he shall ^{Month for the} pay 10 l. *per Menssem*. So that Statute being *Lex* ^{Recusancy of} *Posterior*, doth abrogate the former Law in this ^{the Wife.} Point, that the Husband shall not be charg'd with the Recusancy of his Wife, but only at 10 l. the Month, and not with this, but to redeem her out of Prison, *sed non allocatur*. For this Statute doth not alter any of the former Laws, but pre- ^{Objections to} scribes that a Feme-Covert Recusant being con- ^{the Pleadings.} victed, if she after three Months do not conform herself, she shall be committed to Prison, unless the Husband will pay 10 l. for every Month that she shall be out of Prison, and not conform'd. Secondly, it was objected, That this Information is not good, because the Offence is alledg'd to be from the 10th of September 15 Jac. until the 9th of September 16 Jac. which is thirteen Months compleat, except one Day; then being thirteen Months, and he demanding but for eleven Months, and it appears not for which of the said Months the Penalty is demanded, the Demand is uncertain. As if one should demand 20 l. upon a Bond of 40 l. and doth not acknowledge Satisfaction for the Residue, it is ill *sed non allocatur*. For altho' he doth not demand so much as he might, yet it is well enough, and for the Defendant's Advantage, and the Recovery shall be intended for the eleven Months when she was first absent, and the addition of more time is not material. And it was said at the Bar, that so it had been before adjudg'd betwixt *Smith* and *Weatherheard*, in an Information for using a Trade not being Apprentice, &c. Thirdly, it was objected, That here was not any Issue join'd, for it is only the Plea of a Feme-Covert, and the Baron doth not join with her therein, and a Plea by a Feme-Covert is void; and the Court doubted thereof at first, but it was afterwards mov'd, that the Docket was *Quod Johannes Curson Miles, & Magdalena Uxor ejus, &c. placitant non culp.* And it was thereto said, That that was the Warrant for the Roll, and is but the Misentry of the Clerk, and
 VOL. II. Z ought

ought to be amended, and the Husband's Name inserted. But it was thereunto answer'd, That it could not be done, the Record being of another Term, and the Issue join'd being only the Issue of the Feme, the Verdict pass'd upon that Issue cannot now be amended; for it was said that the Docket-Roll is but for Remembrance to the Clerk, and to instruct the Master of the Office of the Business in Court, and as a Kalendar there-to; but when the Roll is made up, and of another Term, it cannot be guided by the Docket *sed non allocatur*: For it being manifest to the Court that they both appear'd, and the Docket is that they both pleaded, it is a sufficient Guide to the Clerk to draw the Plea in both their Names, and when he omits the Baron's, it is but the Mispri-son of the Clerk, which shall be amended; and it was adjudg'd that it should be amended, and Judgment for the Plaintiff. *Vide 2 R. 3. 17. 4 Eliz. Dy. 211.* But not if the Baron and Feme plead *quod ipsi non sunt inde culpabiles* and it is found, &c. This finding is ill, and cannot be amended, for it would alter the Issue if it should be amended. *Cro. Jac. 529.*

Where the Se-
curity for the
good Behavi-
our shall be
taken.

The Court in which the Recusant shall be bound to his good Behaviour by the said Statute of 23 *Eliz. cap. 1.* is the Court of King's Bench; tho' Mr. *Wingate* is of Opinion, that after Certificate made into the King's Bench, a Justice of Assize, Goal-Delivery, or Peace, might bind the Party to his good Behaviour; and mis-recites the Statute accordingly. *Camley 63, 64.* For where any Proceedings are appointed to be upon or after a Certificate sent to any Court, there by common Intendment the Proceedings are to be in that Court to which the Certificate is sent, if no other Court be named; and it cannot be presum'd by any reasonable Construction, that the Certificate into *B. R.* is to any other end than for the Justices there to proceed in such manner as the Act directs to be done after such Certificate; as no Question they may in this Case as well as upon Certificate of a Presentment, or of Refusal of the Oath

Oath of Supremacy; and 'tis a Rule in Construc-
tion of Statutes, that where the Intention plain-
ly appears, the Law ought to be advanc'd accord-
ing to its end, tho' the Words be short and im-
perfect, especially Laws made for Religion, as is
held. *Hob. 157. & 11 Co. in Magdalen-College*
Case, and 2 Bulstr. 155.

Popish Recusants Convict are not sufficient Sure- Convict Re-
ties on the 23 *Eliz. cap. 1.* and were refus'd ac-cusants can-
cordingly in the Court of *B. R.* in the Case of not be Sure-
Griffith, 2 Bulstr. 155. ties.

An Usher or an Assistant in teaching is deem'd Usher deem'd
a Master in the School, and within the meaning a School-
of the Act; but it seems if a School-Master doth Master.
not come to Church, yet if he be licens'd by the
Bishop or Ordinary, it shall excuse him from the
Penalties of this Act. *Cawley 64, 65.* But by the
14 *Car. 2. cap. 4.* he must among other Things,
subscribe a Declaration or Acknowledgment that
he will conform to the Liturgy of the Church of
England as it is now by Law establish'd; or he
shall for the first Offence suffer Three Months
imprisonment without Bail, and for the Second
and every other Offence shall suffer Three Months
Imprisonment without Bail, and also forfeit 5 *l.*

But if he be licens'd and subscribe, and do as
afore said, and so cannot be punish'd by 23 *Eliz.*
cap. 1. or either of the other said Acts, yet now
by the 17 *Car. 2. cap. 2.* unless he take the Oath
there mention'd, and frequent divine Service e-
stablished by the Laws of this Kingdom, and carry
himself there as in the said Statute is appointed,
he shall forfeit for every Offence 10 *l.* so that now
Conformity in repairing to Church is necessarily
requir'd of every such School-Master.

The Justices of the Court of King's Bench are Who shall in-
the sovereign Justices of Oyer and Terminer and quire of these
Goal-Delivery, and therefore may enquire of, Offences.
hear and determine the Offences against the 23 *El.*
cap. 1. altho' they are not therein specially nam'd.
9 *Co. 118.* Lord *Sanchar's Case.*

If an Indictment be preferr'd upon the said
Statute of 23 *Eliz. cap. 1.* before Justices of Oyer
and

and Terminer, or of Assizes, for any Offence not made Treason or Misprision of Treason by that Act, and there is an Indictment before Justices of Peace likewise for the same Offence, the Judgment of the Justices who first hear, enquire and determine the same, shall stand, and the Judgment given by the other shall be void. As was held in the like Case upon the Statute concerning Inmates. 2 *Inst.* 739.

The Power given by the 23 *Eliz. cap. 1.* to the Justices of Peace in their open Quarter-Sessions to hear and determine the Offence of not coming to Church, is in Force at this Day, notwithstanding 29 *Eliz. cap. 6.* which saith, that every Conviction for not coming to Church, shall be in *B. R.* or at the Assizes or general Goal-Delivery, and not elsewhere; for 3 *Jac. 4.* hath given Power to Justices of Peace in their General or Quarter-Sessions, to enquire, hear, and determine of all Offences for not coming to Church according to former Laws, in such manner as the Justices of Assize and Goal-Delivery might do by former Laws in the Case of Recusancy for not repairing to Church; which is clearly a Revivor of the Power of Justices of Peace given to them by 23 *Eliz. cap. 1.* to proceed against Recusants, and taken from them by 29 *Eliz. cap. 6.*

Power of Justices of Peace in their Sessions in enquiring of Recusancy.

Nor doth that following Clause 3 *Jac. cap. 4.* touching conviction by Proclamation, impeach this, or restrain the Justices of Peace to proceed to Conviction upon Proclamation only and default of Appearance, no more than the Justices of Assize or Goal-Delivery are restrain'd thereby, or by 29 *Eliz. cap. 6.* which gives them likewise Authority to proceed by Proclamation.

For these Clauses of 3 *Jac. cap. 4.* are in the Affirmative, *viz.* First, That the Justices of Peace shall have Power to hear and determine the Offence of not coming to Church according to Law, in such manner as Justices of Assize and Goal-Delivery might do; and those Justices might hear and determine that Offence according to this Statute of 23 *Eliz. cap. 1.* And then comes the
next

next Clause of 3 *Jac. cap. 4.* That the Justices of Peace shall have Power to convict by Proclamation, which is purely Affirmative also: and therefore abrogates no part of the Power given them by the former Clause of 3 *Jac. cap. 4.* And this agrees with what Sir *Edward Coke* saith, 12 *Co. 13.* That if a Man be indicted for Recusancy at the Assizes or Sessions of the Peace, the Court may wave the Proceedings by Proclamation upon the 3 *Jac. cap. 4.* and may still, if they please, proceed against the Party by Process upon this Statute, 23 *Eliz. cap. 1.* In which Case, the Process must be by *Venire facias capias, &c.* As in Indictments of Trespass: And if, saith he, the Party be Fugitive in another County, the Indictment may be remov'd in *B. R.* and then Process may be there made out against him in any County of *England.*

The Justices nam'd in the 23 *Eliz. cap. 1.* are hereby empower'd to proceed by Indictment only, and no other way; for they are to hear and determine after Enquiry. And the Word [*Enquire*] implyeth an Indictment, and is always so to be expounded; and so are the other Words, *Hear* and *Determine*, where other Proceedings are not specially nam'd, as here they are not.

For the Action of Debt, Information, &c. in any Court of Record is given to the Informer *qui tam, &c.* Afterwards by 23 *Eliz. cap. 8.* in a distinct Branch by it self, without any Reference to this.

So that by the 23 *Eliz. cap. 1.* and before the 35 *Eliz. cap. 1.* which gave the Queen an Action of Debt, &c. the Queen had no other Remedy to recover the intire Forfeitures given hereby, but by Indictment only, 11 *Co. 60.* Dr. *Foster's* Case.

By the Words, *Any Court of Record*, in the 23 *Eliz.* are meant the four ordinary Courts of Record at *Westminster*; and in this Sense shall these Words be construed in all penal Statutes, where the Penalty is to be recover'd in a popular Suit;

Suit; so that the Informer *qui tam*, &c. cannot sue before Justices of Assize, Goal-Delivery, or Oyer and Terminer, &c. *Jones* 193. 6 Co. 19, 20. *Moor* 600.

Peers.

Altho' a Peer by the 23 *Eliz.* shall be try'd by his Peers, yet he is to be indicted by an Inquest under the Degree of Nobility; and may be indicted before Commissioners of Oyer and Terminer, or in *B. R.* if the Offence be committed in the County where the King's Bench is. 2 Co. 49.

At the King's election whether he will accept the 20*l.* a Month, or take twothirds of the Estate.

Upon the 3 *Jac. cap. 4.* in *Standen's* Case it was held, That if a Man be indicted and convicted of Recusancy, the King is not bound to stay till next *Easter* or *Michaelmas* Term, to see whether the Recusant will tender 20*l.* for every Month contain'd in the Indictment, and incurr'd after such conviction, for the King, by 3 *Jac. cap. 4.* having his election whether he will accept thereof, or seize two parts of the Recusant's Lands: A Commission for seizure of the Lands may issue out presently, if the King will wave the 20*l. per* Month; for he may take his election as soon as he will after conviction, by *Jones's Justice*. But where the King refuseth 20*l. per* Month, the Recusant's Goods cannot be seiz'd, but only two parts of his Lands, and an Advowson, may be seiz'd as part of the two parts; and if the King by Inquisition seize two parts of a Manor belonging to a Recusant convict, to which an Advowson is appendant, by such seizure two parts of the Advowson are likewise seiz'd by consequence, altho' it be not nam'd in the Inquisition, as was resolv'd in the Case of the Chancellor of *Cambridge* and *Walgrave*, *Hob.* 126. *Moor* 872. And altho' the King hath Title but to two parts of the Advowson, yet he shall present alone by his Prerogative.

But then he shall not seize the Goods.

Advowson.

The Bishop and two Justices cannot take Sureties of him who refuses the Oath for his Appearance at the Assizes or Sessions; as *Wingate*, *Title Crown* 107. mistakes; but must commit him immediately to Goal. And if any Person whatever of the Age of Eighteen Years or above, and under the Degree of a Nobleman, or Noblewoman, be c

the Assizes or general Quarter-Sessions of the Peace, whether voluntarily or brought in upon Process on an Indictment of Recusancy, or for any other matter, and be there tender'd the Oath of Obedience, and refuse to take it, altho' it were never tender'd to him before, yet upon his refusal there, he incurs a Premunire; and in this respect this Statute 3 *Jac. cap. 4.* is more extensive than 7 *Jac. cap. 6.* where there must be a prior tender and refusal of this Oath, otherwise a refusal of it at the Assizes or Sessions doth not make a Premunire by that Act 12 *Co. 131.*

One refusing the Oath of Obedience, incurs a Premunire.

If a Man refuse to take any Word of this Oath, it is a refusal of the whole. 1 *Bulstr. 198.* Lord *Vaux's Case.*

By repairing to Church every Sunday in the 3 *Jac. cap. 4.* it is to be intended to Evening Prayers as well as Morning Prayers, and the Forfeiture of 12 *d.* may be levied Weekly.

To repair to Evening as well as Morning Service.

As to the Words, *Who shall willingly maintain or harbour in their House any Servant, &c.* If a Man takes an Apprentice or Covenant Servant for a certain Time, and not knowing him or her to be a Recusant, and such Apprentice or Servant forbears to come to Church, it seems that the Master shall forfeit nothing, altho' he keeps him in the House: For he doth no more than what the Law will compel him to do during the time agreed on and limited for such Apprenticeship or Service; and this cannot be said to be done willingly, for it is not in his Choice to discharge him until the time is expir'd. But if the Master before he took such Apprentice or other Servant, knew him or her to be a Recusant, or after their forbearance to come Church, retains them for a longer time than was at first agreed on, this is a keeping or harbouring them willingly, and he shall be liable to this Penalty. And this Statute extends to all Servants whatsoever, altho' they dwell not in the Master's House, nor are his Menial Servants; for if they are retain'd in his Service, Fee or Livery, as Bailiff, Steward, or in

Of keeping Servants.

any other Capacity, and forbear to come to Church, the Master shall be punish'd for their Absence.

Of relieving
recusant Pa-
rents.

As to the relieving of Father or Mother, *wanting without Fraud or Covin other Habitation or sufficient Maintenance*, it is held, that if the Father or Mother hath no settled Habitation, but yet hath sufficient Maintenance, the Child who receives such Parent into his House who forbears to come to Church, shall by this Statute of 3 Jac. cap. 4. forfeit 10 l. a Month; for altho' the Parent hath no Habitation, yet this is not a wanting Habitation within the Meaning of the Act, seeing he wanted not sufficient Means to procure one. But if the Parent hath an Habitation, and wants sufficient Maintenance to keep him in that Habitation, altho' he refuse to come to Church, the Child shall forfeit nothing for receiving him into his House.

Dismes or Tythes.

9 Ed. 2. c. 1.
No Prohibition
in a Suit
for Tythes in
the Spiritual
Court.

IN Tythes, Oblations, Obventions, or Mortuaries, the King's Prohibition shall not lie, altho' for the long withholding the same the Money may be esteem'd aa a Sum certain; but if a Clerk shall sell his Tythes gather'd in his Barn or otherwise for Money, if the Money be demanded before a Spiritual Judge, the King's Prohibition shall lye, for by the Sale Spiritual Goods are made Temporal. Stat. 9 Ed. 2. cap. 1.

9 Ed. 2. c. 5.

No Prohibition shall be granted where a Tythe is demanded of a new Mill. Stat. 9 Ed. 2. cap. 5.

18 Ed. 3. c. 7.

Whereas Writs of *Scire Facias* have been granted to warn Clerks to answer Dismes in Chancery, and to shew why such Dismes ought not to be restor'd to the said Demandants, and to answer as well to us as the Party; 'tis enacted, that such Writs from henceforth be not granted, and that the Process upon such Writs be dismiss'd from the secular Judges of such manner of Pleas, saving to us such Right as we and our Ancestors were wont to have. Stat. 18 Ed. 3. c. 7. *pro Clero*.

45 Ed. 3. c. 3.

A Prohibition shall be granted if a Suit be commenc'd in the Spiritual Court for Tythe Wood, or *Sylva cadua*.

If the Wood is of twenty Years Growth or more. Stat.
45 Ed. 3. cap. 3.

If any Person of Holy Church be drawn in Plea in the secular Court for his own Tythes taken by the Name of Goods taken away, and he alledgeth that the Suit is only upon Tythes due of Right, and of the Possession of his Church, the general Averment shall not be taken without shewing especially how the same was a Lay-Chattel. Stat. 1 R. 2. cap. 14.

All Farmers and Occupiers of the Lands, &c. of Aliens shall pay all manner of Dismes to Parsons and Vicars in whose Parish the same are due, notwithstanding the said Lands, &c. be seiz'd in the King's Hands, or any Prohibition to the contrary. Stat. 5 H. 4. cap. 11.

Every Person shall yield and pay his Tythes and Offerings, and other Duties of Holy Church, according to the Ecclesiastical Laws after the Usage and Customs of the Parish or other Place where he dwelleth or occupieth; and for Substraction thereof, the Parson, Vicar, Curate, or other Party griev'd, may convent the Offender before his Ordinary, or other competent Judge, and compel him to yield the said Duties; and if the Ordinary, &c. for any Contempt, Contumacy, Disobedience, or Misdemeanor of the Defendant, request any of the King's Council, or the Justices of Peace of the County, to reform any such Person; then such of the King's Council, or two Justices of Peace, (*Quor' un'*) are hereby authoriz'd to attach the Offender, and commit him without Bail or Mainprize till he have found Surety before one of the Council, or some Justice of Peace, to give due Obedience to the Proceedings in the Ecclesiastical Court; and the said Counsellors, or two Justices of Peace, (*Quor' un'*) are empower'd to take, receive, and record such Recognizances and Obligations. Stat. 27 H. 8. cap. 20.

Provided, that this Act do not extend to the City of London. Ibid.

Provided, that every Person may make such Defence and Appeals as formerly according to the Ecclesiastical Laws. Ibid.

Provided, that this Act remain in Force no longer than until the King, or such other Thirty two Persons as he shall name, shall have establish'd such Laws as his Highness shall ratify, to be call'd the Ecclesiastical Laws of the Church of England. Ibid.

Every Person shall fully, truly, and effectually, divide, set out, yield, or pay, all and singular Tythes, Oblations, and Offerings, according to the lawful Customs and Usages of the Parishes and Places where they shall grow, and pay their

arise, Tythes,

Which may
be recover'd
in the Eccle-
siastical
Court.

Costs allow'd
upon Appeals.

Persons bound
over by two
Justices to
perform the
Sentence.

Fines and Re-
coveries may
be had of
Tythes, &c.

Remedy for
Tythes still in

arise, come, or be due, ; and if any Person withhold the same, or any Part or Parcel thereof, then the Party, whether Ecclesiastical or Lay, having cause to demand the said Tythes or Offerings, may convent the Person offending before the Ordinary, his Commissary, or other competent Judge, who by virtue of this Act shall proceed to hear and determine the Cause according to the Course of the Ecclesiastical Laws. *Stat. 32 H. 8. cap. 7.*

And every Ordinary, or other competent Judge Ecclesiastical, upon Appeal shall adjudge Costs to either Party, and compel the Payment thereof by Ecclesiastical Censures, taking Surety of the Party to whom such Costs shall be adjudg'd to restore the same if the Cause upon the Appeal shall be adjudg'd against him. *Ibid.*

And if any Person after such definitive Sentence shall obstinately refuse to pay their Tythes, or such Sums of Money so adjudg'd, then two Justices of Peace (*Quor' un'*) shall upon Certificate thereof made by the Ecclesiastical Judge cause the Party refusing to be committed to the next Goal, there to remain without Bail or Mainprize till he have found sufficient Sureties before the same Justices to perform the said definitive Sentence. *Ibid.*

Provided, that no Person shall be compell'd to yield Tythes for any Lands which by Law are not chargeable with the Payment of such Tythes. *Ibid.*

Provided, that this Act do not extend to the City of London. *Ibid.*

And where any Person shall have any Estate of Inheritance, Freehold, Term, Right, or Interest, in any Parsonage, Vicarage, Portion, Pension, Tythes, Oblations, or other Ecclesiastical or Spiritual Profit which shall be made Temporal, and go to Temporal Hands or Lay Uses, and shall be disseiz'd, deforc'd, or otherwise kept from their lawful Inheritance, Estate, Seisin, Possession, Term, Right, or Interest, in the same; the Person so disseiz'd, &c. their Heirs, Wives, and such others to whom such Wrong shall be done, shall have a Remedy in the Temporal Courts for the Recovery or obtaining such Inheritance, &c. in like manner as they ought to have had for Lands, Tenements, or other Hereditaments, and Writs of Covenant, Fines, and all other Assurances, made of any such Parsonage, Vicarage, Portion, Pension, or other Profit call'd Ecclesiastical or Spiritual, as aforesaid, shall be granted, as hath been us'd for Fines levied and Assurances made of Lands, Tenements, or other Hereditaments. *Ibid.*

Provided, that this Act shall not give any Remedy or Tythes still in Cause of Action in the Temporal Courts against any Person

son who shall refuse or deny to set out his Tythes, or to the Ecclesiastical Court, pay his Tythes or Offerings; but the Person demanding stical Court, them being Ecclesiastical or Lay shall have his Remedy in the Spiritual Court. *Ibid.*

It is enacted, that the Citizens and Inhabitants of London should pay their Tythes according to a Decree made by the Archbishop of Canterbury, the Lord Chancellor, Houses in Lord President, &c. who order'd and decreed, that within the said City and Liberty every Inhabitant should pay after the rate of sixteen Pence half Penny for every 10 s. per Ann. Rent of their Houses, &c. See the Act and Decree at large. 37 H. 8. cap. 12. See Title London.

The aforesaid Acts of 27 H. 8. Cap. 20. and 32 H. 8. 2 & 3 Ed. 6. cap. 7. are confirm'd; and it is farther enacted, that every Person shall truly divide and set out his prædial Treble Damages Tythes in their proper kind as hath been of Right yielded for Tythes and paid within forty Years before making this Act. taken away And no Person shall carry away such Tythes before he and not set hath justly divided and set forth the same, or agreed with out, reco- the Parson, Vicar, or other Proprietor of them, on pain verable in the of forfeiting treble the Value of the Tythes so taken away. Temporal Stat. 2 & 3 Ed. 6. cap. 13. Courts.

And it shall be lawful for any Person to whom any Parson may prædial Tythes ought to be paid, his Deputy or Servant, see his Tythes to see the said Tythes truly set forth and sever'd from set out. the nine Parts, and the same quietly to take and carry away. And if any Person carry away his Corn, Hay, or other prædial Tythes, before the Tythe is set forth, or withdraw his Tythes of the same, or of such other thing as prædial Tythes ought to be paid, or do stop or let the 2 & 3 Ed. 6. Parson or Proprietor, their Deputies, or Farmers, to view, take, and carry away their Tythes as aforesaid, And if sub- whereby the said Tythe is lost, impair'd, or hurt, upon stracted, &c. Proof thereof before the Spiritual Judge, he shall pay to recover double the Value of the Tythe so taken, lost, or carry'd double the away, besides the Costs and Expences of the Suit, the Value in the same to be recover'd before the Ecclesiastical Judge. *Ibid.* Spiritual

And if any Person who shall have any Beasts, or other Court. Cattel tythable, going or feeding in any Waste or Com-Tythe of Cat- mon whereof the Parish is not certainly known, he shall tle where the pay Tythes for the Increase of the said Cattel to the Par-Bounds of the son or Proprietor of the Parish, Hamlet, Town, or Place, Parish are not where the Owner of the Cattel inhabiteth. *Ibid.* ascertain'd.

Provided, that no Person be compell'd to pay Tythes *Modus*, &c. for any Lands, &c. which by Law, or by any Privilege or Prescription, are not chargeable with the Payment of such Tythes, or are discharg'd by any Composition real.

Ibid.

Provided,

improv'd
Heath to pay
Tythe in seven
Years, tho' it
never paid
before.

Provided, that all barren, Heath, or waste Ground, other than such as is discharg'd of Tythes by Act of Parliament, which shall be improv'd and converted to Arable or Meadow, shall at the end of seven Years after such Improvement pay Tythes for the Corn and Hay growing thereon. *Ibid.*

Provided, that if such barren or Heath Ground hath before been charg'd with the Payment of Tythes, and the same be hereafter improv'd or converted to Meadow, the Owner shall during the seven Years next following the said Improvement pay such kind of Tythes as was paid for the same before the said Improvement. *Ibid.*

Personal
Tythes to be
paid where
they have
been ac-
custom'd to
be paid.

And every Person exercising Merchandize, Bargaining, and selling Handicraft, or other Art or Faculty, in such Places as heretofore within forty Years have us'd to pay such personal Tythes shall yearly, at or before the Feast of *Easter*, pay for his personal Tythes the tenth Part of his clear Gains, his Charges and Expences, according to his Estate, Condition, or Degree, being deducted. *Ibid.*

And in all Places where Handicraftsmen have us'd to pay Tythes, the same Custom of Payment of Tythes to be observ'd and continued. *Ibid.*

And if any Person refuse to pay his personal Tythes as aforesaid, the Ordinary may call the Party before him, and examine him by all lawful Means, other than the Parties own Oath, concerning the Payment of the said personal Tythes. *Ibid.*

At what time
of the Year to
be paid.

Provided, that every Person who by Law ought to pay their Offerings, shall yearly pay the same to the Parson, Vicar, or Proprietor, their Deputies, or Farmers, of the Parish where he shall happen to dwell or abide at such Offering Days as within four Years past hath been us'd, and in Default thereof at *Easter* next following. *Ibid.*

Tythes of Fish
to be paid as
usual.

Provided, that this Act shall not extend to any Parish near the Sea who have us'd to satisfy their Tythes by Fish, but they shall pay their Tythes as they have been accustomed for forty Years past, and shall pay their Offerings as aforesaid. *Ibid.*

Tythes to be
recover'd in
the Spiritual
Court.

And if any Person shall subtract or withdraw his Tythes or other Duties aforesaid, he shall be sued in the Ecclesiastical Court, and it shall not be lawful to convent or sue such Withholder of Tythes before any other than the Ecclesiastical Judge. And if any such Judge give Sentence in the said Causes, and no Appeal or Prohibition be depending, and the Party condemn'd do not obey the Sentence, such Judge may excommunicate him; and if he wilfully stand excommunicate forty Days next after upon Publication thereof in the Parish Church where the Party

And the Par-
ty not obey-
ing the Sen-
tence excom-
municated.

so excommunicate is dwelling or most abiding, the said And Writ of Ecclesiastical Judge may signify to the King in his Court *Excom. cap.* of Chancery the State and Condition of the said Party issued. excommunicate, and require Process *de Excommunicato capi-endo* to be awarded against him. *Ibid.*

And if any Person for any of the Causes aforesaid be Person suing prosecuted in the Ecclesiastical Court, and do sue a Pro- a Prohibition hibition in any of the King's Courts, then such Party be- to give a Co- fore any Prohibition be granted shall deliver to the Judge py of the Li- of the Gourt where such Prohibition shall be granted a bel and his true Copy of the Libel depending in the Ecclesiastical Suggestion. Court, subscribed with his Hand, and under the Copy of the said Libel shall be written the Suggestion for which he demandeth the said Prohibition: And if the said Sug- If the Sug- gession be not prov'd true by two Witnesses at least within gestion be not prov'd, a Con- six Months after the Prohibition granted, then a Consul- sultation shall be granted, and the Party shall recover double be granted, and double Costs against the Person who prosecuted the said Prohibi- Costs. tion, to be assess'd by the Court where the said Consulta- tion shall be granted; which Costs and Damages may be recover'd by Action of Debt, Bill, Plaint, or Information, in any Court of Record. *Ibid.*

Provided, that this Act shall not give any Ecclesiasti- cal Judge any Jurisdiction to hold Plea in any thing con- trary to the Statute of *Westm. 2. cap. 5.* or the Statutes of *Articuli Cleri circumspēte Agatis, Silva Sedua,* the Treatise *de Regia Prohibitione,* ne against the Statute of *Anno primo Edwardi tertii,* the tenth Chapter, or any of them, nor of any Matter whereof the King's Courts ought to have Ju- risdiction. *Ibid.*

No Tythes of Marriage Goods to be hereafter exacted or requir'd in *Wales,* or the Marches of the same. *Ibid.*

All Persons that shall sow any Hemp or Flax shall pay 3 *W. & M. c.* to the Parson, Vicar, or Impropriator of the Parish, 3. yearly for every Acre of Hemp or Flax pull'd or drawn a 4 *s. per Acre* constant annual Sum uot exceeding 4 *s.* before the same is to be paid for carried off the Ground, and so proportionably. *Stat. 3 W. Tythe Hemp & M. cap. 3.* and Flax.

Provided that this Act do not charge any Lands dis- charg'd by *Modus, Composition* or otherwise. *Ibid.*

To continue for seven Years, and to the end of the next Sessions of Parliament. *Ibid.*

Alter'd by the 11 & 12 *W. 3. cap. 16.*

If any Person shall substract or withdraw, or any ways 7 & 8 *W. 3.* fail in the payment of his small Tythes, Offerings, Obla- c. 6. tions, Obventions or Compositions twenty Days after De- Two Justices mand thereof, it shall be lawful for the Person to whom of Peace im- the same shall be due, (so as the same be under the Value power'd to de- ostermine Com-

plaints for of 40 s. to make his Complaint in Writing to two of
 Non-payment more Justices of Peace of the County, Town Corporate,
 of small Place or Division (neither of the said Justices being Pa-
 Tythes under trons of the Church where the said Tythes arise, or inte-
 40 s. rested therein.) And the said Justices are requir'd to
 summon in Writing under their Hands and Seals, every
 Person against whom such Complaint shall be made; and
 upon his Appearance, or in default of Appearance, the
 said Summons being prov'd upon Oath, they shall proceed
 to hear and determine the said Complaints; and they shall
 in Writing under their Hands and Seals, adjudge the Case,
 and give such reasonable Allowance for such Tythes, &c.
 withheld, as they shall judge reasonable, and also such
 Costs and Charges not exceeding 10 s. as shall appear to
 be just. *Stat. 7 & 8 W. 3. c. 6.*

The Money
 adjudg'd due
 to be levied
 by distress
 and sale.

And if any Person shall neglect ten Days to pay the
 Money so adjudg'd, the Constables or Church-Wardens
 of the Parish shall by Warrant from the said Justices, di-
 strain his Goods and Chattels, and after detaining them
 three Days, if the said Sum be not paid with the Charges
 of the Distress in the mean time, they may make publick
 Sale of the same, and pay the Party complaining, the Sum
 adjudg'd, and retain such reasonable Charges for making
 and keeping the Distress, as the said Justices shall think
 fit. *Ibid.*

And the said Justices are empower'd to administer an
 Oath to the Witnesses in the Examinations aforesaid.

This Act not to extend to *London* or the Liberties there-
 of, or to any City or Town Corporate where Tythes, &c.
 are particularly settled by Act of Parliament. *Ibid.*

Complaint to
 be made with-
 in 2 Years.

Appeal to the
 Sessions.

No *Certiorari*
 to be allow'd.

Justices not
 to inter-
 meddle in
 case of a *Mo-
 dus*.

And no Complaint of Tythes, &c. shall be heard by
 such Justices, unless the same be made within two Years
 after due. *Ibid.*

And every Person aggriev'd may appeal to the next
 Quarter-Sessions, where the Matter may be finally heard
 and determin'd, and the said Judgment revers'd, as the
 Justices see cause; but if they shall confirm the Judg-
 ment, they shall decree the same by order of Sessions, and
 give Costs against the Appellant to be levied by distress
 and sale; and no Proceedings or Judgment had pursuant
 to this Act shall be remov'd or superseded by *Certiorari* or
 otherwise, unless the Title of such Tythes, &c. be in
 Question. *Ibid.*

And where any Person complain'd of, as aforesaid, for
 withholding his Tythes, shall insist upon any Prescription,
 Composition or *Modus* to be freed from the Payment of
 the said Tythes, &c. and deliver the same in Writing to
 the said Justices, subscrib'd by him, and shall give Secur-

ty to the Party complaining to the Satisfaction of the Justices, to pay all Costs and Damages, as upon a Trial of Law shall be given against him. In case the said Prescription, Composition, or *Modus* shall not be allow'd, then the Justices of Peace shall forbear to give any Judgment in the Matter, and the Person complaining may take his Remedy at Law. *Ibid.*

And every Person who shall obtain any Judgment, or Judgment to
against whom any Judgment shall be obtain'd before the be inroll'd.
said Justices of Peace out of Sessions, shall procure the said Judgment to be inroll'd at the next general Quarter-Sessions; and the Clerk of the Peace shall inrol the same, for which he shall have a Fee not exceeding 1 s. And upon the Judgment so inroll'd, and paying the Sum so adjudg'd, it shall be a good Bar against any Person who shall take any other Remedy for the same small Tythes, And shall be
a Bar to any
other Process.
Ec. Ibid.

And if any Person after such Judgment against him, shall remove out of the County, &c. before the Sum adjudg'd be levied, the Justices of Peace who made the Judgment, or one of them, shall certify the same under their Hands and Seals to any Justice of Peace of the County or Place where the said Person shall be inhabiting, who is requir'd by Warrant to the Constables or Church-Wardens of the Place, to levy the Sum adjudg'd upon the Goods and Chattels of such Person. *Ibid.*

And the said Justices of the Peace who shall hear and determine the Matters aforesaid, shall have power to give Costs not exceeding 10 s. to the Party prosecuted, if they shall find the Complaint to be false and vexatious. *Ibid.*

And if any Person be sued for any thing done in pursuance of this Act, and the Plaintiff be Nonsuit, &c. he shall have double Costs. *Ibid.*

Costs given
to the Defen-
dant, if the
Complaint
be vexatious.

Provided that any Clerk or other Person who shall begin any Suit for small Tythes, &c. in the Court of Exchequer, or in the Ecclesiastical Courts, shall have no Benefit by this Act. *Ibid.*

This Act to continue for three Years, and to the end of the next Session of Parliament. *Ibid.*

Every Quaker refusing to pay or compound for his great or small Tythes, may be compell'd to it by the two next Justices of the Peace, if the Value do not exceed 10 l. 7 & 8 W. 3. c. 34.
Which see more at large under the Title Dissenters. Stat. 7 & 8 W. 3. cap. 34.

The abovesaid Act of 7 & 8 W. 3. cap. 6. for recovery of small Tythes, is further continued for seven Years; and by 3 & 4 Ann. cap. 18. the same is made perpetual. 10 & 11 W. 3. c. 15.
Stat. 10 & 11. W. 3. cap. 15.

Every

11 & 12 W. 3. c. 16. Every Person who shall sow any Hemp or Flax, shall pay to the Parson, Vicar, or Impropriator of the Parish or place, yearly 5 s. for every Acre of Hemp and Flax so sown, and so proportionably, for which the Parson, &c. shall have the usual Remedy allow'd by Law. Stat. 11 & 12 W. 3. cap. 16.

Hemp and Flax.

Provided that this Act shall not charge any Land discharg'd of Tythes by a *Modus* ancient, Composition, or otherwise. *Ibid.*

This Act to continue for seven Years, and to the end of the next Session of Parliament. *Ibid.* Further continued by 6 Ann. cap. 28. for seven Years, and to the end of the next Sessions of Parliament; and by the 1 Geo. 26. made perpetual.

READINGS.

Tythe defined.

Dismes or Tythes in a large Sense are the tenth Part of any thing; but the Word is here appropriated to the Tenth of the Increase arising from Lands, and the Stock of the Lands, and the Industry of the Parishioner, payable yearly to the Parish Priest for his Maintenance. They are an Ecclesiastical Inheritance collateral to the Estate of the Land, and of their proper Nature due only to Ecclesiastical Persons by the Ecclesiastical Law, and therefore no Unity of Possession can either extinguish or suspend them; so that they remain *in Esse*, and may be demis'd or granted to any Spiritual Man notwithstanding such Union. 11 Co. 13.

Three Kinds of Tythes. Prædial.

Personal.

Mix'd.

Tythes are of three Sorts, *viz.* prædial, personal, or mix'd; prædial are those that arise from the Ground either spontaneously or by Manurance, as Grain, Grass, Underwood, Fruits, or Herbs; personal Tythes are such as arise by the Labour and Industry of Man, as by Buying and Selling, Merchandize, Handicraftsmen, and such as work for Hire, as Carpenters, Masons, &c. (other than common Day-Labourers;) mix'd Tythes are such as arise from the live Stock upon the Land, as Calves, Lambs, Pigs, Wool, Milk, Cheese, Eggs, &c. 2 Inst. 649.

Upon

Upon the Statute of *Articuli Cleri* Sir Edward Tythes to be Coke says, no Tythes shall be demanded of the taken but Rawyn, or After-Pasture, or of Stubble, because once in the the Parson shall not have a double Tythe of one Year. and the same thing in one Year. If the Parson hath Tythe of Fruit that groweth on Fruit-Trees, and in the same Year the Owner fell down the Fruit-Trees, and make Billets or Faggots of them, he shall have no Tythes of them, as it was holden Hill. 8 Jac. Rot. 1109. in *Communi Banco* inter Baxter and Hapes. 2 Inst. 621.

As to what shall come under the Denomination Timber not of Great Wood, exempt from Tythes, mention'd Tythable. in the 18 Ed. 3. cap. 7. it is held, that by Great Wood is meant only such as either by the Common Law or Custom of the Country is esteem'd Timber, and that this Act does not extend to other Wood; Oak, Ash, Elm, Beech, Horsbeech, Hornbean, and Asps, have been deem'd Timber, for that they serve for Building and Repairs; but otherwise of Birch, as it was adjudg'd in the Case of Leonard. 2 Inst. 643.

And if a Timber-Tree be dead, and the Owner cut it down and convert it to Fuel, no Tythe shall be paid thereof: So for the Bark of Oaks, being Timber-Trees, no Tythes shall be paid; but for Acorns Tythes shall be paid, because they renew yearly. And if a Man usually Nor the Lop top or lop Timber-Trees, Tythes shall not be of Timber-paid, tho' they be under the Age of twenty Trees. Years. And if a Man cut down Timber-Trees, Tythes shall not be paid for the Jermins or Branches that grow out of the Roots of what Age soever, for the Root is Parcel of the Inheritance. 2 Inst. 643.

If any sue in Court Christian for Tythes *de grossis Arboribus ultra Etatem viginti Annorum*, he incurs the Danger of a *Premunire*, if so it be contain'd in the Libel. 2 Inst. 645.

A Country may prescribe to be quit of Tythes Prescription of Wood, or any other Tythes, so there be suf- to be free from ficient Maintenance and Sustentation of the In-Tythes.

cumbent besides; but a Town cannot so prescribe.
Ibid.

Laymen enabled to sue for Tythes in the Spiritual Court.

The Statute of 32 *H. 8. cap. 7.* was made to enable Lay-Men that had Estates or Interests in Parsonages or Vicarages impropriate, or otherwise, in Tythes, to sue for Substraction of Tythes in the Ecclesiastical Courts, and to provide that no Person shall be sued or compell'd to pay any manner of Tythes for any Manors, Lands, Tenements, or Hereditaments, which by the Laws or Statutes of this Realm were discharg'd or not chargeable for Payment of any such Tythes.
2 Inst. 648.

In a Prohibition between *Walter Heale* and *John Sprat* the Case was, *Walter Heale* set out his prædial Tythes, and divided them justly from the nine Parts, and soon after carried the same away. *Sprat* sued for Substraction of the same in the Ecclesiastical Court. *Hale* pleaded that he had set them out *ut supra*. Whereunto *Sprat* said, that presently after his setting out, &c. he carried them away *in Fraudem Legis*. Adjudg'd that this was Fraud and Guile within the Act of 2 *Ed. 6. cap. 13.* albeit he did justly divide the same within the Letter of this Law. It was farther resolv'd, that if the Owner of the Corn before Severance grant the same to another, with Intent that the Grantee should take away the same, to the end to defraud the Parson, &c. of his Tythe, this is Fraud and Guile within this Statute. *Ibid. 649.*

In a Suit for Tythes. the treble Value to go to the party griev'd.

Altho' the Statute of 2 *Ed. 6. cap. 13.* doth not give the Forfeiture of treble Damages to any Person in certain, and therefore 'twas pretended the Forfeiture should be given to the King, thereupon the Attorney-General, *Hill. 29 Eliz.* did exhibit an Information in the Exchequer against *Wood* of *Cambridgshire* for this treble Forfeiture, for carrying away his Tythes before they were justly divided, and a Verdict was found for the King; but it being mov'd in Arrest of Judgment, that when ever a Forfeiture is given against

against him that doth dispossess the Owner of his Property, as here he doth of his Tythes, there the Forfeiture is given to the Party griev'd or dispossess'd; and so it was adjudg'd by Sir Roger Manhood, and the whole Court of Exchequer, and has been receiv'd for Law ever since, that the Party interested in the Tythes doth in an Action of Debt recover the treble Value.

And the Reason why no more than the double Value is to be recover'd by this Statute in the Ecclesiastical Court is, that in that Court he shall recover the Tythes themselves, which is equivalent to the treble Forfeiture at Common Law. And at the Common Law he shall recover no Costs, but by this Statute he recovers his Costs and Expences in the Ecclesiastical Courts. And if the Plaintiff be nonsuit, or a Verdict pass for the Defendant, the Defendant shall recover no Costs, as was adjudg'd, *Trin. 43 Eliz. in C. B. inter Downton Plaintiff, and Sir Moile Finch Defendant*; for that this Action is no Action of Debt within the Statute of 23 H. 8. because it is neither upon a Specialty or by Contract, nor an Action for Wrong personal immediately done to the Plaintiff; bus it is for a Non-Feazance, viz. for not setting out of Tythes. 2 Inst. 651.

The Tythes as well as the double Value to be recover'd in the Spiritual Court with Costs.

But the Defendant to have no Costs.

Upon that Branch of the Statute of 2 Ed. 6. cap. 13. which says, *that none shall be compell'd to pay Tythes for any Lands, &c. which by the Laws and Statutes of this Realm, or by any Privilege or Prescription, are not chargeable with the Payment of any such Tythes, or that be discharg'd by any Composition real*, it is held, that Tythes shall not be paid for any thing that is of the Substance of the Earth, and are not annual, as of Quarries of Stone, Turf, Flags, Tinne, Lead, Brick, Tyle, Lime, Marle, Coals, Chalk, Pots of Earth, and the like; nor of Beasts that be *feræ Naturæ*, as Deer, &c. nor of Agistment of such Beasts as the person hath Tythe of, nor of Cattell that manure the Ground; but of baren Beasts he shall have Tythes for Agistment or Herbage of them, unless they

Mines and Stone Quarries, &c. pay no Tythes.

Nor Coals, Lime, &c.

No Tythes of Beasts *feræ naturæ*.

Tythes of barren Beasts.

No Tythes of
Rakings.
Or of Hedge
Wood or Fire
Wood.

they be nourish'd for the Pale or Plough, and so imploy'd, *Mich. 41 & 42 El. coram Rege*; Prohibition *inter Green and Hull, & Mich. 37 & 38 El. inter Grisman and Lewes in Communi Banco*; nor of Raking left without Covin, nor of After-Pasture; no Tythes shall be paid for *Sylvæ Cædus* imploy'd to Hedging, or for Fuel for Maintenance of the Plough or Pale, nor for the Herbage of Meers, Bawks, or Fearn, Locks of Wool, or Stubble, &c. but they are freed thereof by the Common Law and Custom of the Realm. *Vid. Hill. 8 Jac. coram Rege, Baxter's Case.* And in that Case it was resolv'd and adjudg'd that a Parson shall not have two Tythes of one Land in one Year, as of Corn, and of the Stubble, or Herbage, of Hay, and of the After-Pasture, and *sic in similibus*; but if the Soil of an Orchard be sown with any kind of Grain, the Parson shall have Tythes of the Fruit-Trees and of the Grain, for they be of several and distinct kinds. *2 Inst. 651, 652.*

If a Man pay Tythe for his Corn, and after grindeth the same Corn at a Mill within the same Parish, no Tythe Meal shall be paid therefore. *Ibid.*

Modus wav'd
for 20 Years,
and yet re-
viv'd.

Mich. 43 & 44 Eliz. in a Prohibition between *Nowel and Hicks* Vicar of *Edmonton* in *Middlesex*; the Plaintiff in the Prohibition alledg'd a Custom within the said Parish of *Edmonton* time out of mind of Man to pay for every Lamb a Penny, &c. and Issue was taken upon the Custom, and the Jury found, that before twenty Years last past, time out of mind there was within the said Parish such a Custom and *Modus decimandi*, but for twenty Years last past, by reason of Suits and Troubles, the Inhabitants of the said Parish had paid Tythe Lambs in kind. And in this Case these two Points were adjudg'd, 1st, When a Custom doth create an Inheritance this cannot be wav'd or omitted by Payment or other Matter in *Pais.* 2^{dly}, Albeit that the *Modus decimandi* had not been yielded or paid by twenty Years

Years, yet the Prescription may be general, for that the Custom once establish'd doth continue. As if a Man hath a Common of Pasture, &c. and taketh a Lease of the Lands, &c. for many Years, yet after the Years ended he may prescribe generally for the Inheritance of the Common continued. 2 Inst. 653, 654.

As to barren Land discharg'd of Tythes by the What shall be
2 Ed. 6. cap. 13. it is held, that if the Ground deem'd barren
be not apt for Tillage, yet if it is not of its own ren Land ex-
Nature barren, it is not within this Act. As if empt from
Wood be grubb'd up, and made fit for the Plough, Tythes.
and imploy'd therein, it shall pay Tythes presently, as it was resolved by the whole Court of
Common Pleas. Hill. 9 Jac. 1. So if Marsh,
Meadow, or other Land, by not cleansing the
Trenches or Sewer, or by Inundation of Water,
Ill-Husbandry, or other Accident, become un-
fruitful; yet are they not to be deem'd barren
Land within this Statute, nor shall the Parson be
barr'd of his Tythes by the Ill-Husbandry or the
Negligence of the Owner or Possessor. 2 Inst.
656.

Tythes ought to be paid in kind *de Jure* of Of Tythes *de*
Wax, Honey, or Bees in a Hive, and Tythes *Jure* and by
shall also be paid of young Pidgeons; but no Custom.
Tythes *de Jure* ought to be paid for Coneys with-
out a Custom, because they are *fera Natura*.
2 Danv. 583.

No Tythes *de Jure* are to be paid for Fish taken
in a common River, but the Court it seems was
divided. Ibid. & 584. But it is agreed, that by
Custom, Tythes may be demanded for Fish in a
River.

It has been held, that Tythes shall not be paid
of Turkeys, or of their Eggs, nor of tame Par-
tridges, or Pheasants, because they are *fera Na-*
tura. Moor 599. But of this Mr. Danvers makes
a Quare.

If the Tythes be not carried away in a reason- Tythes to be
able time, the Parishioner may bring his Action taken in a
against reasonable
time.

How to be
prepar'd.

against the Parson, or take them Damage-Feasant.
3 *Bulst.* 336.

When the Tythes of Grass are sever'd from the nine Parts, the Parson *de Jure* may make it into Hay upon the Land where it grows, and may go over the Land of the Parishioner in the Way to come at the Place to make it. *Mich.* 14 *Jac.* 1. *B. R.* between *Newberry* and *Reynolds*.

A Man is not bound to make into Hay the Tythe of Grass that he cuts, but he may set out the Tythe thereof whilst it is in Grass-Cocks. *Hob.* 250. But the Parishioner ought of common Right to cut down the Corn and prepare it for the Parson, and to make the Wheat into Sheaves. 2 *Danv.* 596.

Tythe Milk
how paid.

The tenth Part of the Milk of every Meal shall not be paid for the Tythe thereof, but every tenth Meal entire, by reason of the Trouble which would otherwise accrue in collecting so small Parcels. *Pasch.* 13 *Car.* 2. between *Dod* and *Ingleton*, *Raym.* 277. decreed accordingly; and said by *Raym.* that Tythe Milk ought to be deliver'd by the Parishioner at the Parsonage House; but by the Chief Baron and two others it was decreed that it should be deliver'd in the Church Porch, because the neighbouring Parishes did so. *Ibid.* 596.

Tythe Wood.

If a Man buys Woods tythable and burns them in his House, he shall not pay Tythes for them; nor shall Tythes be paid for Wood cut and imploy'd for Inclosure in his Husbandry; and where the greatest part is us'd in Hedging, it is held, that no Tythe shall be paid for the rest that is cut down for that Purpose. *Cro. Eliz.* 499. *Moor* 917. But it is otherwise if employ'd in the Inclosure of another's Corn, tho' the Parson hath the Tythe thereof. 1 *Saund.* 142. But where there is no Custom for the not paying Tythes for Wood spent in Fire in the House, or imploy'd in the Hedges or Fences, the Parishioner shall not be discharg'd of the Payment of Tythes for such Wood *de Jure per Legem Terræ*; for it is usual in

Pro.

Prohibitions to alledge Customs, as for the Hearth-Penny, and by reason of other Lands whereof he pays Tythes. *Trin. 4 Car. 1.* between *Norton* and *Fermar. Cro. Car. 80.*

No Tythe shall be paid *de Jure* for Pidgeons^{Pidgeons.} which are spent in the House, but Tythes shall be paid for such Pidgeons as are sold. *2 Danv.*

597.

If a Man cuts down Grass, and before he makes^{Grass cut, and} it into Hay, being only in Swathes, he carries it^{given to the} away and gives it to his Plough Cattle for their^{Plow Cattle.} necessary Sustenance, not having sufficient for their Sustenance otherwise, no Tythes shall be paid thereof. *Mich. 9 Car. B. R.* between *Crawley* and *Wells per Curiam*, and a Prohibition granted, this being an *Hertfordshire Case. 2 Danv.*

597.

If a Man cuts down Wood and burns it to make^{Wood.} Brick for the Repairs of his House within the Parish, no Tythe shall be paid thereof; but if it be for the enlarging of his House more than is necessary for his Family, as for his Pleasure and Delight, he shall pay Tythes for it. *Trin. 10 Car. 1. B. R.* between *Nixon* and *Browne. 2 Danv.*

598.

Where a Prohibition is of the Tythes of the^{Rakings.} Rakings, the Suggestion ought to be that they were *minus voluntaria sparsa*, otherwise it is not good: For it is not sufficient to say, that they were *Lapsa & dissipata in collectione.* *Hill. 14 Jac. B. R.* *Peck* and *Haruis* adjudg'd. See also *Green v. Hun. Cro. Eliz. 702.*

So if a Man shears his Sheep about their Necks^{Wool.} to preserve them from Vermin, and not for the Benefit of the Wool, the Parson shall not have Tythe for this; but if he shear them largely by Covin for the Benefit of the Wooll, it is otherwise. *Cro. Jac. 575.*

If a Man kill Sheep, yet he shall pay Tythe of the Wool that comes off them, but not for the Skins. *14 Car. 1. B. R.* between *Dent* and *Salvin. 2 Danv. 599.*

Tares cut
green, &c.

Prohibition was pray'd upon suggestion of this Custom, that for Tares cut or mown before they be ripe and given to Plough Cattel, Tythes ought not to be paid. And upon another Custom for Head-Lands sown with Corn, us'd to be fed with Plough Cattel, or mow'd and cut for that purpose, that the Owners shall be discharg'd of Tythes. And upon this Suggestion grounded upon special Customs, the Court granted a Prohibition. *Mead v. Thurman. Cro. Car. 285.*

No Tythe of
Cattle for the
Plough or
Pale.

No Tythes shall be paid for feeding of Horses or Oxen for the Plough, or Cattel for the Pale. *2 Danv. 599.* Nor are Tythes due for young Cattel rear'd for the Plough or Pale. *Green v. Hun. Cro. Eliz. 702.*

But for dry
and agisted
Cattel.

For Beasts agisted for Hire, and for dry Cattel depastur'd to be sold, Tythes shall be paid. *Shorington v. Fleetwood. Cro. Eliz. 476.* But if he spends them in his own House, he shall not pay Tythe for them. *Ibid. Facy v. Long. Cro. Car. 172.*

Land sow'd
to depasture
Plough Cattel,
discharg'd.

If one according to the Custom of the Country sows Land to feed his Horses for Tillage, and hath us'd to suffer his Horses to be fed upon the Land without any mowing thereof, the Parson shall not have any Tythes thereof, for this is no more than Pasture for the Horses; and in these Cases in the Prohibition he need not prescribe to be discharg'd of Tythes, because they are discharg'd by Law. *14 Jac. B. R. between Heburn and Woodright.*

Green Pease.

If any Man gathers green Pease to eat in his House, no Tythe shall be paid of them; but it is otherwise if he gather to sell or feed Hogs. *2 Danv. 600.*

Hoftry-
Horfes.

If an Inn-keeper depastures Travellers Horses, he shall pay Tythes for the Herbage by them eaten. *Hill. 1655. between Gilbert and Everfly. Hard. 35. adjudg'd.* But the Court was in doubt how much, but conceiv'd they ought to have regard to the Value of the Land, which being prov'd to be 30*l.* yearly, they inclin'd to allow 2*s.* per Pound, but said they would award a Commission to inquire of the Value of those Tythes,

un-

unless the Parties should agree in the mean time, which they advise.

Tythes of the Herbage of barren Cattel are *Barren Cattel* due *de communi jure* according to the Value of to pay 2 s. in the Land, after the Rate of 2 s. *per* Pound; for the Pound of they cannot be otherwise valued or accounted for, the Rent of because the Profits of the Land for which they the Land, are paid are perceiv'd by the Mouths of Beasts, but by Custom or Prescription, such Tythes may be paid in other manner. *Pasch. 13 Car. 2. between Holbeech and Whadcock. Hard. 184. said by the Chief Baron. 2 Danv. 601.*

Finch, Solicitor, mov'd for a Prohibition to the Ecclesiastical Court to stay a Suit for Tythes of Hops, commenc'd there by the Vicar, upon a Suggestion, that they had paid for all Tythe Hops so much an Acre to the Parson time out of Mind. But it was deny'd; for there could be no such Composition time out of Mind, Hops not being known in *England* until Queen *Elizabeth's* time. But it was said by the Court, that perhaps the Vicaridge was endow'd time out of Mind of the small Tythes, of which nature Hops were: then the Prescription of paying a *Modus* to the Parson shall not take them from him, for it shall be taken to have commenc'd since the Endowment. *1 Vent. 61.* But admitting there was before a *Modus* for small Tythes, it seems to be doubted whether it would not extend to Hops. *2 Danv. 601.*

Hops a small Tythe, and due to the Vicar, tho' a *Modus* paid the Parson.

A Vicar libell'd in the Spiritual Court for Tythes of young Cattel, and surmis'd that the Defendant was seisd of Lands in *Middlesex*, of which Parish he was Vicar, and that the Defendant had Common in a great Waste, call'd *Sedgmore* Common, as belonging to his Land in *Middlesex*, and put his Cattel into the said Common. The Defendant pray'd a Prohibition, for that the Land where the Cattel went was not within the Parish of *Middlesex*. The same Plaintiff libell'd against the same Defendant for Tythes of Willow-Faggots, who suggests to have

a Prohibition, or the Payment of 2 *d.* a Year to the Rector for all Tythes of Willow. The same Plaintiff libell'd also for Tythes of Sheep. The Defendant to have a Prohibition suggests, that he took them in to feed after the Corn was reap'd, *pro melioratione Agriculturae infra Terras arabiles, and non aliter.*

As for the first of these, no Prohibition was granted, because of that Clause of 2 *Edw. 6.* whereby it is enacted, That Tythes of Cattel feeding in a Waste or Common where the Parish is not certainly known, shall be paid to the Parson, &c. of the Parish where the Owner of the Cattel lives.

Modus to the Rector a discharge to the Vicar.

For the second they held, That a *Modus* to the Rector is a good Discharge against the Vicar.

For the third, they held, That the Parson ought not to have Tythes of the Corn and Sheep too, which make the Ground more profitable, and to yield more *per quod*, &c. 1 *Mod.*

Tythe Fish. 216.

A Custom to pay the twentieth Fish in Satisfaction of the Tythe of all Fish taken in the Sea, is good; for the Tythe thereof being payable only by Custom, it may by that Custom be less than a tenth. *Pasch. 18 Car. 2.* between Sheppard and Primrose. 1 *Levinz. 179.* adjudg'd. 2 *Danv. 602.* But a Custom to pay the twelfth Sheaf in Satisfaction of all Sheaf-Corn is held not to be good, because the tenth part is due of common Right, and therefore a Custom to pay is not good without other Matter. 1 *Lev. 179.*

Custom to pay the 12th Sheaf, not good.

Wool.

It is a good *Modus decimandi*, that in consideration the Parishioner hath time out of Mind, &c. paid Tythe-Wooll of all his Sheep which he hath shorn, as well of those he bought two Days before the Shearing, as of others he had kept through the whole Year, he hath us'd time, &c. to be discharg'd of Tythe-Wooll of such Sheep that he sold two Days before the Shearing; for by the Spiritual Law they should have Tythes

Tythes of him & *de residuo pro Rata* which he sold before Shearing; and therefore in consideration that he here pays Tythes of those which he bought so small a time before the Shearing for the whole Year, which is not due by the Spiritual Law, it is therefore good. *M. 14 Jac. B. adjudg'd. 2 Danv. 602, 603.*

It is a good *Modus* for the Tythes of Calves to pay a Calf for the Tythe, if he have seven in one Year, and if he have under seven, to pay an Halfpenny for every Calf for the Tythe; and if he sells any Calf, that he shall pay the Tenth of that for which he sells it. *M. 14 Jac. B. R. between Lee and Collins. Resolv'd, and a Prohibition granted. Ibid.*

Tho' Tythe-Wooll is due at the time of Clip-Wooling, yet a Custom to pay it at *Lammas Day* is good. *Cro. Eliz. 702.*

If a Man prescribes in *modo decimandi* for Hay and Grass in forty Acres of Land, and the Tenant converts it into a Hop-Yard, or into Tillage, the *Modus* is gone; for when the *Modus* is special for Hay and Grass only, by conversion of this to other Uses, the *Modus* is gone. *H. 6. Jac. B. between Sharp and Coult, per Curiam. 2 Danv. 607.* But when it shall be laid down for Hay And reviv'd, again, it shall revive.

If a Man prescribes to pay 6s. 8d. for all manner of Tythes of a Park, and after the Park is dispark'd and converted into Tillage and Pasture-Land, the *Modus* is gone by the Alteration aforesaid. *Ibid.* Otherways where paid for the Tythes. *Moor 909. Cro. El. 467.*

In the Village of *D.* in *Norfolk*, there hath been a Parson and Parsonage and Vicarage to the Church thereof, time whereof, &c. and the Parsons have always had the great Tythes, and the Vicar the small Tythes; and the Parsons for Forty Years have had the Tythes of such a Field, *viz.* the Corn; and it was now planted with Saffron: And the Vicar sued for the Tythes thereof, and the Parson sued a Prohibition, and it was thereupon demurr'd. *Coke mov'd, that*

Parks.

that it well lay : For by the Statute of 2 Ed. 6, Tythes shall be paid as they had been paid for Forty Years before, which had always been to the Parson ; and altho' the Land be now otherwise employ'd, yet the Parson shall have the Tythes thereof. And therefore it hath been adjudg'd here in the Case of *Shipdam* Park in *Norfolk*, where 10s. was always paid for the Tythes of all Things renovant within the said Park ; and afterwards the Park was dispark'd, and converted into arable Land, yet no other Tythes should be paid but the 10s. *Popham*. It was otherwise rul'd in the Exchequer in Mr. *Worth's* Case, for a Park in the County of *Somerſet*. *Fenner*. The Law is certainly as it is cited in that Judgment in this Court; and the Clerks ſaid, that they had divers Precedents in Court according to the Judgment cited. *Popham*. The difference is, when the Præſcription is to pay Money for all the Tythes of ſuch a Park; and there, peradventure, if it be diſpark'd, he ſhall not pay any Tythes : And where it is to pay the Shoulder of every Buck or a Doe at *Chriſtmas* for all Tythes of the Park ; there, if it be diſpark'd, Tythes ſhall be paid as of other Land, And in the principal Caſe he held, that the Vicar ſhould have the Tythes of Saffron as *minuta decima* : For notwithstanding that Tythes had been always paid for that Land to the Parſon, yet being converted to another nature and uſe, it ſhall be paid to the Vicar as if it had been converted into an Orchard. So if the Vicar is to have all the Hay, if the Meadow be converted into Arable, the Parſon ſhall have it ſo, *e converſo*. Wherefore, &c. before a Conſultation was awarded. *Bedingsfield v. Feak. Cro. Eliz. 467.*

Vicar to have
the ſmall
Tythe, tho'
the Land paid
the Hay, if the
Meadow be converted
into Arable,
the Parſon ſhall
have it ſo, *e
converſo*.
Wherefore,
&c. before
a Conſultation
was awarded.

If a Parſon ſows his Glebe, and afterwards Leases out the Land, the Leſſee ſhall pay Tythes. And if a Parſon ſows his Glebe, and dies before Severance, and after a Succeſſor is inducted, and after the Executor, or his Vendee ſevers the Embleaments, the Succeſſor ſhall have Tythes of them; for tho' the Executor represents the Perſon of the

the Testator, yet he cannot represent him as Parson, inasmuch as another is inducted. 2 *Danv.*

613. *Quare.*

If a Man sells to me Wood, and I burn it in my Tythe-Wood House, the Vendor shall be charg'd for the Tythes. paid by the Vendor,
So if he agift the Cattle of a Stranger in his Land, the Parson may sue the Owner of the Land for the Tythes of the Pasture; but it has been held, that Tythes for the Agiftment of Cattle are payable by the Owner of the Cattle, for the Cattle by whom. Agifted Cattel
take the Profit and Herbage of the Soil, in the Case of *Perry and Wright. Hard. 184.* And the Chief Baron said, the Owner of the Soil might pay them, but clearly the Agiftor is compellable to pay them; but it was adjudg'd that it belong'd to the Court Christian to determine whether the one or the other ought to be sued, and therefor a Consultation was granted. 2 *Danv.* 614.

If a Man hath a Nursery of Trees, and he sells Tythe of a them and pulls them up himself, he shall pay the Nursery of Tythe; but if he sells them particularly to another, the Vendee shall pay the Tythes. *Mich. 16 Car. 2. between Grant and Hedding, & al. Hard. 380, 381. per Curiam.* As in case of Tythe of Tythe-Corn Corn, if sold standing, the Vendee shall pay the by whom paid Tythes; but if sold after severance, the Vendor must. 2 *Danv.* 614.

Lands lying within a Forest, and in the Hands of the King, do not pay Tythes, tho' within a Parish. *Styles 137.* But tho' the King by reason of his Prerogative is priviledg'd from payment of Tythes, yet his Lessee is not, *Cro. Eliz. 511.*

A Hundred or a County cannot prescribe in a *non A Hundred or County can-*
decimando for a Thing that is in its nature *de jure*, Tythable: For as no one single Person, or his E- not prescribe
state can, no more by the same Reason can the in *non deciman-*
Hundred, which consists but of many single Per- do.
son's Estates. *Vide March 26. 1 Rol. Abr. 653. Salk. 655.*

But of things which in their nature are not But of Things
Tythable *de jure*, a Hundred or County may pre- not Tythable
scribe in a *non decimando*, because they are dif- in their nature
charg'd they may.

Wood not
Tythable but
by Custom.

charg'd in such Case without a Custom to the contrary, and they do but insist on their antient-Right; and that Custom hath not prevail'd against it. *Ergo* the Case of *Wood*, 1 Ro. Abr. 654. Lit. Rep. 152, 153. And the Hearth-Penny which is but a *Modus* for it, they allow'd to be good Law, because Wood is not in its nature Tythable, nor within the reason of Tythable Things, which come not to perfection every Year. *Hick. v. Woodson. Hill. 8 W. 3. B. R. 2 Salk. 655, 656.*

Tythe of Agistment is due of common Right, because the Grass, &c. which is eaten, is *de jure* Tythable, and must have paid Tythe if cut at Perfection. *Ibid.*

What a good
Modus.

A *Modus* to pay one Thing for another, or a part of the same Thing in another manner, may be good; but a Prescription to pay part of the very Thing that is Tythe, can never be a good *Modus*, unless payable in some other manner, so that the Parson has a Benefit by it. 3 Cro. 609. 2 Cro. 47. 1. And 799 Mod. 229. Hob. 250. Raym. 237. 3 Bulstr. 326. As to the Case of thirty Eggs to be paid at *Easter* in lieu of all Tythe-Eggs, he is bound to pay that whether he has Hens or no, and he must pay it at a certain time. *Hill v. Vaux. Mich. 10 W. 3. B. R. 2 Salk. 656.*

Whether so
many Fleeces
of Wool in
lieu of all
Tythes, be
not a good
Modus.

H. prescrib'd to pay ten Fleeces of Wool and two Lambs in lieu of all Tythes, and *Price* and *Bury Barons*, were of Opinion this was an ill *Modus*, because it is one Species of Tythes for another, and there is great Incertainty, for one Fleece may be twice as big and three times the Value of another. *Vidi 2 Lutw. 1052. 3 Cro. 786. 276. Mo. 909. 1 Roll. Abr. 649. Hard. 174. Ward Chief Baron, and Smith Baron, contra.* 1st. A *Modus* is nothing but a real Composition for or in lieu of Tythes, or an annual Profit certain and permanent; and they held that the payment of any one Chattel for Tythe, was or might be a good *Modus*, as well as Money; for why might not the Parson originally agree to take ten Fleeces for his Tythe as well as a Penny, They

ad-

admitted that payment of Tythe of one Species, or payment of a *Modus* for one Species of Tythe, could not be a discharge as to another Species; but they held that this was not a payment of Tythe, nor a payment for a Species of Tythe, because it was to be paid at all Events whether there be Sheep or no. And they deny'd the Case of 1 *Rol. Abr.* 651. and held it no more uncertain than to pay a *Modus* of ten Cheeses, which may differ vastly both in Nature, Quantity, and Value; and it tends to the disquiet of a Country to break in upon Customs and Usages, and it ought not to be done but on plain and manifest Reason. The Archbishop of York v. the Duke of New-Castle. *Mich. 3 Ann. in Scac. 2 Salk. 656, 657.*

A *Modus* to pay 2 s. in the Pound of the improv'd Rent in lieu of all Tythes was held naught, for that is to rise and fall as the Land is let, and the Parson cannot know it. And tho' a Custom to pay the double Value for a Fine may be good, yet that arises from a Man's contract, which shall never be void where it may be reduc'd to any certainty, and differs from this case of a *Modus*, which ought to be as certain as the Duty, which is destroy'd by it. *Holt C. J. dubitante* upon a Motion for a Prohibition. *Startup v. Dodderidge. Pasf. 4 Ann. B. R. 2 Salk. 657.*

Modus must be certain.

No Tythes shall be paid in kind without Fish. Custom for Fish taken in the High Sea, for they are *feræ naturæ*, and the Sea is not in any Parish. 2 *Danv.* 583.

No Tythes ought to be paid *de jure* for Houses of Habitation, nor for any Rent reserv'd upon a Demise for Houses of Habitation. 11 *Co.* 16. Dr. *Grant's* Case. But in *London* Tythes are paid for the Rents of Houses by a Decree confirm'd by Parliament.

Tythes for Houses.

If a Man be feis'd of Lands within a Parish that us'd to pay Tythes, and makes a Nursery thereof for Imps and Plants of several Kinds of Fruit, as Apples, Pears, Plumbs, &c. and of Ashes,

Nurseries.

Ashes, and after sells several of them to Strangers out of the Parish to be transplanted, he shall pay Tythes of this Nursery to the Parson; for tho' the Imps are part of the Freehold so long as they continue there, yet when they are transplanted, they are sever'd and taken from the Freehold; and if this shall be permitted, the Parson may be defeated of the Tythes 'of all the Land in his Parish by making of it into Nurseries. *Hill. 14 Car. B. R. between Gibbs and Wiburn. adjudg'd per Curiam upon a Demurrer, and a Consultation granted accordingly. Intratur Mich. 14 Car. Rotulo 75. 2 Danv. 585.* But if a Man cuts his Coppice-Wood, and thereof pays his Tythes; and afterwards grubs up the Roots, he shall not pay Tythe of them, because they are parcel of the Freehold. *Ibid.*

Roots of
Trees.

Wood above
twenty Years
growth.

Tythe shall be paid of Hazle, Willows, Holly, Alder, and Maple, tho' they are above twenty Years growth; but in such Countreys where Willows are us'd for Timber, it is held no Tythe shall be paid for them. *2 Danv. 589.*

After Pasture.

If a Man pays Tythe of Hay, no Tythes *de jure* ought to be paid for the Pasture of the same Land for the same Year. *2 Danv. 590.*

Mills.

Tythes shall not be paid of Fulling-Mills, Tinning-Mills, Plate-Mills, Rag-Mills, Paper-Mills, &c. unless where there is a special Custom to pay Tythes for them. *Ibid. Cro. Jac. 523.*

For a Saddle-
Horse.

A Prohibition awarded to the Spiritual Court, for that *Hampton* Parson of *Thimblethorpe* sued *Wild* in the Spiritual Court, because the said *Wild* had let a certain Close, reserving Pasturage for his Saddle-Gelding; and the Parson sued him for Tythes to be paid of Things renovant: But this Horse being only for Labour and Travel, would not renew; otherwise it had been if he had kept an Horse to sell; whereby Profit had accrued, there he should have paid Tythe. *Houghton contra* in the principal Point, because by the Pasture he may increase Profit; and so it is a Profit *Ratione fundi*, as in case of barren Cattel.

He

He ought to alledge further, that they were us'd to Labour; and by all the three Justices, if he had averr'd in the surmise, that he us'd the Horse for Labour, the Prohibition had lain. *Hampton v. Wild. Cro. Jac. 430.*

In some places Hay is accounted a small Tythe; but what shall be deem'd great or small Tythes, is not yet settled in every Instance. Hay in some places a great, and in others a small Tythe. Woad.

Tythes of Woad growing in the nature of an Herb are held to be small Tythes. *Hill. 1 Car. between Sir Richard Udal and Tyndal Vicar of Alton*; but agreed by the Court that it would have been great Tythes, if all the Profits of the Parsonage had consisted of such Tythes; for Things which in their own nature are small Tythes, become great, when the greatest part of the Profits consist therein. As in some Countreys the greatest part of the Land in the Parish is Hemp or Hops, and there they are great Tythes; and so it may be of Wool or Lamb.

If by the Custom of a Parish, the Parson hath had all the great Tythes, and the Vicar all the small; and within the Parish there are 650 Acres of Arrable Land, and 750 of Pasture, and 20 Acres thereof lying in several parcels in the open Field, during the eight Years last past were sown with Flax by several Persons, but before that Time no Flax had been sown in the Parish, the Tythes thereof shall be taken as small, and belongs to the Vicar. *Trin. 4 W. & M. between Wharton and Lisle. 3 Lev. 365. adjudg'd by Dolben, Gregory and Eyre, contra the Opinion of Holt Chief Justice*; and he held the Tythes of Flax, Hemp, &c. growing in a Garden, Backside, Orchard, &c. to be *minuta*, otherwise when growing in the open Field, be the Quantity more or less. But the other three Justices said, Tobacco, Hops, &c. in their nature are *minuta decima*, and there was not any such Quantity in this Case as should alter their nature, admit it alterable by the Quantity, in which they did not agree. *2 Danv. 594, 595.*

Owner need
not give the
Parson notice
when he sets
out the
Tythes.

If a Parishioner set out the Tythes, and sever the Tenth part from the nine parts justly and truly, though he does not give a personal Notice to the Parson, or general Notice in the Church, of the Time of setting out the Tythes, so that the Parson may be present at the setting out the Tythes- and see it be justly done, yet this is a good setting out of the Tythes. *Mich. 13 Car. B. R. between Chase and Ware per Curiam. 2 Danv. 595. Cro. Eliz. 206.*



